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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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UNITED SERVICES AUTOMOBILE) (
ASSOCIATION

4

) (CIVIL ACTION NO.

5

VS.) (2:18-CV-366-JRG

6

) (MARSHALL, TEXAS
JANUARY 6, 2020

7

WELLS FARGO BANK, N.A.) (9:49 A.M.

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TRANSCRIPT OF VOIR DIRE OF THE JURY PANEL

10

MORNING SESSION

11

BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,

12

UNITED STATES DISTRICT JUDGE

13

APPEARANCES:

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23 (Proceedings recorded by mechanical stenography, transcript
24 produced on a CAT system.)
25

P R O C E E D I N G S

(Venire panel in.)

COURT SECURITY OFFICER: All rise.

THE COURT: Good morning. Please be seated.

Good morning, ladies and gentlemen. It's good to have you with us this morning.

My name is Rodney Gilstrap, and I am the Chief United States District Judge for the U.S. District Court for the Eastern District of Texas.

I live here in Marshall. I've lived in Marshall since 1981 when I graduated from law school and came here to start practicing law. I've practiced law in and around this part of Texas for 30 years before I was nominated and confirmed to be a U.S. District Judge. And I will confess to you that I was not born in Texas, but I got here as quick as I could.

I was born in Pensacola, Florida, and I came to Texas to go to college at Baylor University where I did my undergraduate degree, and then I stayed and went to law school at Baylor School of Law.

I'm married. I have two grown children. And my wife owns and operates a retail floral business here in Marshall.

Now, I tell you all these things about myself because in a few minutes, I'm going to ask each of you to

09:50:38 1 give me the same kind of information about each of you.

09:50:41 2 And I think you're entitled to know as much about me as I'm
09:50:44 3 about to find out about each of you.

09:50:46 4 We are about to engage in the selection of a jury
09:50:50 5 in a civil case involving allegations of patent
09:50:53 6 infringement. However, before we go any further, I'd like
09:50:57 7 to briefly review with you how we came to have our civil
09:51:01 8 jury trial system in the United States.

09:51:03 9 If you go back in ancient history and if you begin
09:51:07 10 with the first five books of the Old Testament, the
09:51:13 11 Pentateuch, you'll see that the ancient Jewish Nation
09:51:15 12 empaneled juries to decide issues of property ownership and
09:51:18 13 property value.

09:51:20 14 The ancient Greeks began using a jury system about
09:51:23 15 1500 BC. The Romans, as they did with many things, copied
09:51:29 16 the jury system from the Greeks. And it was the Romans
09:51:32 17 that brought the jury system to what we now know as Great
09:51:36 18 Britain when they conquered that island in the 4th Century
09:51:40 19 AD.

09:51:40 20 Having brought the jury system to Great Britain in
09:51:43 21 the 4th Century AD, it flourished there for 800 years until
09:51:47 22 the 12th century when a tyrannical king came to the throne
09:51:55 23 of Great Britain known as King John. And King John ended
09:51:59 24 up in a series of multiple disputes with his nobles which
09:52:03 25 led England to the brink of civil war.

09:52:06 1 Among those disputes was King John's efforts to do
09:52:11 2 away with the right to trial by jury in a civil case.
09:52:14 3 Those disputes, as I say, led England to the brink of civil
09:52:18 4 war, but that civil war was avoided by an agreement.

09:52:22 5 A settlement was reached between the king and his
09:52:23 6 nobles, signed at a location known as Runnymede. And the
09:52:27 7 document that settled all those disputes and avoided civil
09:52:30 8 war and restored the right to trial by jury in a civil case
09:52:34 9 in England is known as the Magna Carta. In fact, ladies
09:52:40 10 and gentlemen, 28 of our 50 United States have adopted from
09:52:43 11 the Magna Carta the exact language verbatim guaranteeing
09:52:48 12 the right to trial by jury in a civil case.

09:52:50 13 So you can see that the right to trial by jury was
09:52:55 14 an important part of life in Great Britain for centuries
09:53:00 15 before those brave souls who traveled across the Atlantic
09:53:07 16 Ocean came to these shores as colonists of Great Britain,
09:53:10 17 and they brought with them the concept of the right to
09:53:14 18 trial by jury in a civil case. And that right to trial by
09:53:17 19 jury in a civil case flourished in British North America
09:53:20 20 for over a hundred years until another tyrannical king came
09:53:24 21 to the throne of Great Britain.

09:53:27 22 This time his name was King George III. In fact,
09:53:30 23 when Thomas Jefferson sat down to write the Declaration of
09:53:34 24 Independence that specifies clearly and specifically why we
09:53:38 25 should separate from Great Britain and form our own

09:53:41 1 independent nation, one of the specific points spelled out
09:53:46 2 in the Declaration of Independence was the Crown's efforts
09:53:50 3 to prevent there being the right to trial by jury in civil
09:53:53 4 cases in this country.

09:53:55 5 After we won our independence, that right was so
09:54:00 6 important that it was written into our governing document,
09:54:04 7 which you should all know to be the Constitution of the
09:54:08 8 United States. In fact, it's a part of what we call the
09:54:10 9 Bill of Rights, the first 10 amendments to the
09:54:13 10 Constitution.

09:54:13 11 Those rights were added and ratified in 1791, and
09:54:19 12 among those first two -- first 10 amendments, you find the
09:54:24 13 Seventh Amendment. The Seventh Amendment to the U.S.
09:54:27 14 Constitution guarantees constitutionally to every American
09:54:31 15 citizen the right to submit their civil disputes to a trial
09:54:34 16 by jury, and we've had that right since 1791.

09:54:38 17 So by being here today, ladies and gentlemen, and
09:54:42 18 presenting yourselves for jury duty, in a very real way,
09:54:46 19 you are all doing important public service to preserve and
09:54:50 20 protect and defend the rights that we enjoy as Americans,
09:54:55 21 including the right to trial by jury in a civil case.

09:54:57 22 I always tell citizens who appear for jury duty,
09:55:02 23 as you have this morning, that in my personal opinion, jury
09:55:07 24 duty is the second highest form of public service any
09:55:10 25 American can render. In my personal opinion, the highest

09:55:14 1 form of public service that any American can render to our
09:55:19 2 country is to serve in our armed forces.

09:55:21 3 Now, later this morning, the lawyers are going to
09:55:26 4 address the panel, that's those of you who have appeared
09:55:30 5 for jury duty, and they're going to ask questions, and
09:55:32 6 that's their right to ask questions as a part of securing a
09:55:35 7 fair and impartial jury from among you to hear the evidence
09:55:39 8 in this case.

09:55:40 9 But as they ask those questions of you later this
09:55:43 10 morning, I want you to understand that they're not trying
09:55:46 11 to be nosy; they're not trying to pry into your personal
09:55:49 12 affairs unduly. They are trying to carry out their
09:55:53 13 obligation to secure for the purposes of this trial a fair
09:55:58 14 and impartial jury to hear the evidence.

09:56:01 15 I don't know if it will happen this morning during
09:56:04 16 jury selection, it rarely does, but I want to make you
09:56:08 17 aware that if you should specifically be asked a
09:56:11 18 question -- and some of these questions will be to the
09:56:13 19 panel as a whole, some of them will be to specific members
09:56:17 20 of the jury panel, each of you individually, so you can
09:56:19 21 expect questions both ways -- but if during the process you
09:56:23 22 should be asked a question that you consider to be so
09:56:25 23 personal and so private that you're not comfortable
09:56:28 24 answering it in front of the rest of the panel, then you
09:56:31 25 always have the right to simply say, I'd like to discuss

09:56:34 1 that with Judge Gilstrap.

09:56:35 2 And if that's your answer, I'll provide an
09:56:38 3 opportunity for you to answer that question to me outside
09:56:40 4 of the presence of the rest of the members on the panel.

09:56:44 5 However, ladies and gentlemen, that is a rarity.
09:56:46 6 It doesn't come up often, but I want you to know that at
09:56:49 7 least that possibility is there if it should.

09:56:51 8 The important thing is, while you're being
09:56:53 9 questioned this morning that your answers are full,
09:56:56 10 complete, and truthful to the questions that are asked.
09:56:59 11 There are no wrong answers to any of the questions you're
09:57:03 12 going to be asked as long as your responses are full,
09:57:05 13 complete, and truthful.

09:57:07 14 Now, the trial in this case will begin today and
09:57:12 15 will continue through the remainder of this week, and I
09:57:14 16 expect that we will finish and have a verdict sometime on
09:57:20 17 Friday of this week. That's my expectation.

09:57:22 18 And so I need to ask if there are any persons on
09:57:26 19 the panel that either have a surgical procedure scheduled
09:57:29 20 this week for you or a member of your family that's
09:57:32 21 dependent upon you, or if you have non-refundable
09:57:35 22 international airline tickets to leave the country -- and
09:57:39 23 hopefully a return ticket to come back -- if there's some
09:57:42 24 very serious reason why you could not be here this week if
09:57:46 25 you were selected to serve on the jury, then I need to know

09:57:49 1 about that. If there's anybody that falls in that
09:57:51 2 category, please raise their hand.

09:57:53 3 I don't see anybody in the jury box. I don't see
09:57:59 4 anybody outside the jury box. I see no hands. Okay.
09:58:03 5 Thank you.

09:58:03 6 At this time, I'm going to call for announcements
09:58:07 7 in the case of United States Automobile Association --
09:58:08 8 excuse me -- United Services Automobile Association versus
09:58:14 9 Wells Fargo Bank. This is Civil Case No. 2:18-CV-366.

09:58:20 10 And, counsel, as you give your announcements,
09:58:22 11 please identify yourselves, the members of your trial
09:58:24 12 teams, and any corporate representatives that you have with
09:58:28 13 you. We'll begin first with the Plaintiff. What says the
09:58:32 14 Plaintiff?

09:58:33 15 MR. BUNT: Thank you, Your Honor. Good morning,
09:58:35 16 ladies and gentlemen. My name is Chris Bunt, and I
09:58:38 17 represent the Plaintiff, United Services Automobile
09:58:42 18 Association whom we will refer to as USAA.

09:58:43 19 With me today is Mr. Jason Sheasby, Ms. Lisa
09:58:47 20 Glasser, Mr. Tony Roles, and our corporate representative,
09:58:55 21 Mr. John Brady, who is a vice president at USAA.

09:58:58 22 And, Your Honor, we're ready to proceed.

09:59:00 23 THE COURT: Thank you, counsel.

09:59:01 24 What says the Defendant?

09:59:02 25 MR. HILL: Good morning, Your Honor. May it

09:59:05 1 please the Court. Good morning, ladies and gentlemen. My
09:59:07 2 name is Wesley Hill, and it is my privilege in this case to
09:59:10 3 represent the Defendant, Wells Fargo Bank. And I'd like to
09:59:14 4 introduce you to the other folks here at the table with me.

09:59:16 5 Trying the case with me this week will be Mr. Tom
09:59:18 6 Melsheimer, Ms. Danielle Williams, and Mr. Brett Johnson.
09:59:22 7 And our corporate representative, ladies and gentlemen,
09:59:24 8 from Wells Fargo Bank is Mr. Al Hecht. He's a senior vice
09:59:31 9 president with Wells Fargo.

09:59:32 10 And we're also ready to proceed, Your Honor.

09:59:34 11 THE COURT: Thank you.

09:59:35 12 Now, ladies and gentlemen, as I've told you, this
09:59:38 13 is a patent case arising under the patent laws of the
09:59:41 14 United States. And what the Plaintiff, USAA, is claiming
09:59:45 15 in this case is that their patents were infringed by the
09:59:48 16 Defendant, Wells Fargo Bank, and the Plaintiff is seeking
09:59:53 17 money damages because of that alleged infringement.

09:59:55 18 Now, the Defendant, Wells Fargo, denies that it
09:59:58 19 has infringed the patents owned by USAA and Wells Fargo
10:00:04 20 contends that those patents are invalid.

10:00:07 21 Now, what I've just told you is a very shorthand
10:00:10 22 informal way of describing this case in layman's terms. I
10:00:14 23 know that you've all seen the video prepared by the Federal
10:00:18 24 Judicial Center on patent cases, and having seen that, you
10:00:21 25 know more than most citizens in East Texas do about the

10:00:24 1 patent process.

10:00:25 2 As I say, the lawyers on both sides are about to
10:00:28 3 question the panel to gather information to exercise their
10:00:33 4 challenges and complete the process of securing eight
10:00:36 5 jurors who will serve as the jury in this case and will
10:00:39 6 hear the evidence on a fair and an impartial basis.

10:00:42 7 Again, ladies and gentlemen, there are no wrong
10:00:45 8 answers to any of the questions you'll be asked as long as
10:00:48 9 the responses you give are full, complete, and truthful.

10:00:52 10 During the jury selection process, if any of the
10:00:56 11 attorneys should ask anybody on the panel or the panel as a
10:00:59 12 whole a question that I don't think is proper, I will
10:01:02 13 certainly stop them. But I want you to understand, ladies
10:01:04 14 and gentlemen, these are very skilled and experienced trial
10:01:08 15 lawyers. They understand the rules of this Court. I don't
10:01:11 16 expect that to happen.

10:01:12 17 One thing I do want to call your attention to
10:01:15 18 before the lawyers begin their questioning, because I
10:01:18 19 suspect you may be questioned about it by the lawyers, is
10:01:21 20 the burden of proof that will be applied in this case.

10:01:25 21 In a patent case like this, a jury may be called
10:01:28 22 upon to apply two different burdens of proof. The jury may
10:01:33 23 apply a burden of proof known as the preponderance of the
10:01:37 24 evidence, as well as a second burden of proof known as
10:01:39 25 clear and convincing evidence.

10:01:40 1 Now, when you -- when you're responding to any of
10:01:47 2 the lawyers' questions about your ability to apply these
10:01:50 3 burdens of proof, I need to instruct you that when the
10:01:52 4 party -- when a party has the burden of proof on any claim
10:01:56 5 or defense by a preponderance of the evidence -- that's the
10:02:00 6 first burden of proof I mentioned to you -- that means that
10:02:04 7 the jury must be persuaded by the credible or believable
10:02:07 8 evidence that that claim or defense is more probably true
10:02:11 9 than not true. I'll say that again, more probably true
10:02:17 10 than not true.

10:02:18 11 Sometimes this preponderance of the evidence is
10:02:22 12 talked about as being the greater weight and degree of
10:02:25 13 credible testimony.

10:02:26 14 Let me see if I can give you an example that I
10:02:29 15 hope will help. I think everyone in the room can see in
10:02:33 16 front of our court reporter a statue of the Lady of
10:02:37 17 Justice. She is blindfolded. She holds the Sword of
10:02:40 18 Justice in her right hand lowered at her side. And at her
10:02:44 19 left, she holds above her the Scales of Justice. And those
10:02:47 20 scales are equally balanced. And that's where the parties
10:02:50 21 start off in this case, equally balanced in the same
10:02:54 22 position.

10:02:55 23 Over the course of the trial, both sides are going
10:03:00 24 to put on evidence in this case. And you can think of it
10:03:02 25 as putting evidence on one side of the scales for the

10:03:04 1 Plaintiff and one side of the scales for the Defendant.

10:03:07 2 And when all the evidence has been presented, the
10:03:09 3 jury is going to be asked to answer certain questions. And
10:03:14 4 if the party has the burden of proof on any question, and
10:03:17 5 you look at those scales and you consider all the evidence
10:03:19 6 that's been put on both sides during the trial, if those
10:03:23 7 scales tip in favor of the party who has the burden of
10:03:27 8 proof, even if they tip ever so slightly, then that party
10:03:31 9 has met the burden of proof of a preponderance of the
10:03:33 10 evidence.

10:03:38 11 On the other hand, ladies and gentlemen, where a
10:03:40 12 party has that second burden of proof, proving any defense
10:03:46 13 by a clear -- by clear and convincing evidence, it means
10:03:48 14 that the jury must have an abiding conviction that the
10:03:52 15 truth of the party's factual contentions are highly
10:03:58 16 probable. I'll say that again, an abiding conviction that
10:04:01 17 the truth of the party's factual contentions are highly
10:04:04 18 probable. This second standard, this clear and convincing
10:04:07 19 evidence standard is a higher burden of proof than the
10:04:12 20 preponderance of the evidence.

10:04:15 21 If you think about the example I gave you, the
10:04:18 22 evidence is put on each side of the scales by Plaintiff and
10:04:20 23 Defendant over the course of the trial. Then the jury's
10:04:22 24 asked to consider that in answering certain questions. If
10:04:26 25 a party has the burden of proof by clear and convincing

10:04:29 1 evidence, then those scales must tip in that party's favor,
10:04:33 2 and they must definitely tip in that party's favor. It is
10:04:37 3 not adequate if they tip ever so slightly.

10:04:43 4 Clear and convincing evidence requires more and is
10:04:46 5 a higher burden of proof than the preponderance of the
10:04:48 6 evidence.

10:04:48 7 Now, ladies and gentlemen, there's a third burden
10:04:52 8 of proof that has absolutely no application in this case,
10:04:54 9 but I'm confident every one of you has heard about it
10:04:57 10 because you've seen it on television and you've seen it in
10:05:00 11 the movies, and that's beyond a reasonable doubt. That
10:05:05 12 burden of proof, beyond a reasonable doubt, is the burden
10:05:08 13 of proof applied in a criminal case, and it has absolutely
10:05:12 14 no application whatsoever in a civil case such as this.

10:05:17 15 You should not -- you should not confuse clear and
10:05:20 16 convincing evidence with beyond a reasonable doubt. It's
10:05:22 17 not as high as beyond a reasonable doubt, but it is a
10:05:26 18 higher standard than the preponderance of the evidence.

10:05:31 19 I give you these instructions in case the lawyers
10:05:33 20 ask you about your ability to apply those two burdens of
10:05:37 21 proof fairly and impartially to the evidence that will be
10:05:40 22 presented if you're selected to serve on this jury.

10:05:42 23 Now, before the lawyers address you, I'm going to
10:05:48 24 let each of you at this time give me the same information
10:05:52 25 about each of yourselves that I gave you about myself when

10:05:54 1 we started this morning. Each of you have laminated copies
10:05:59 2 of nine questions, and I think they're also shown on the
10:06:02 3 screen -- or they will be. They're readily available to
10:06:07 4 you.

10:06:07 5 This is how we're going to do this, ladies and
10:06:09 6 gentlemen. We're going to start with Panel Member No. 1,
10:06:12 7 and the Court Security Officer is going to bring a handheld
10:06:16 8 microphone to Panel Member No. 1. And at that point, I'm
10:06:18 9 go to ask that member of the panel to stand and answer
10:06:23 10 those nine questions. And, if you will, make sure that you
10:06:26 11 hold the handheld microphone close enough so that you can
10:06:29 12 be heard.

10:06:30 13 This is a big room. There are a lot of bodies in
10:06:33 14 here. And it takes a lot of sound so that everybody can
10:06:37 15 hear, so make sure that you speak up.

10:06:39 16 Also, please direct your answers toward the
10:06:41 17 lawyers at the tables because they're the ones that need to
10:06:44 18 know the answers to these questions from each of you.

10:06:47 19 Then when we're finished with Panel Member No. 1,
10:06:50 20 he'll hand the microphone to Panel Member No. 2. She'll do
10:06:53 21 the same thing. And Panel Member No. 3 is next. And we'll
10:06:56 22 go through all the members of the panel one at a time.

10:06:58 23 Also, ladies and gentlemen, I'd like to tell you
10:07:04 24 that during the process where you're actually being asked
10:07:07 25 questions by the lawyers, if you're asked a specific

10:07:10 1 question that calls for you to give a specific response,
10:07:14 2 then you should wait until the handheld microphone is
10:07:16 3 brought to you by the Court Security Officer, stand, and
10:07:19 4 give your answer to the lawyer that's asked the question.

10:07:24 5 We'll do it the same way for questions asked
10:07:27 6 during the examination by the lawyers as we will during
10:07:30 7 this background information section when you answer those
10:07:33 8 nine questions for us.

10:07:34 9 So with that, we'll begin with Panel Member No. 1,
10:07:40 10 and we'll ask our Court Security Officer, Mr. Johnston, to
10:07:42 11 take the microphone to Panel Member No. 1.

10:07:45 12 JUROR BOUZEK: Good morning. My name is Charles
10:07:53 13 Bouzek. I live in Diana, Texas. I have two grown sons.
10:07:58 14 My place of employment is Sabine Mining company -- or
10:08:01 15 actually coal mining company, obviously. I'm operation
10:08:05 16 supervisor with them. I've been with them for 36 years.

10:08:09 17 My educational background is I am a high school
10:08:13 18 graduate. I have an A and P license, which is an Airframe
10:08:18 19 and Powerplant license which I acquired through St. Louis
10:08:24 20 University. It's also where I'm from.

10:08:26 21 My spouse's name is Kathleen Kay. She's a
10:08:30 22 seamstress, and she's done that work for many years, and
10:08:33 23 she works out of our home.

10:08:36 24 And I -- prior jury services, I've sat on one
10:08:41 25 criminal case, and that's the extent of it.

10:08:46 1 THE COURT: Where was that criminal case, sir, and
10:08:48 2 how long ago was it?

10:08:49 3 JUROR BOUZEK: It's approximately about 15 years
10:08:51 4 ago; Upshur County.

10:08:52 5 THE COURT: Thank you. If you'll hand the mic to
10:08:55 6 Ms. Jones, Panel Member No. 2.

10:08:56 7 JUROR JONES: Hello. Cheryl Jones. I live in
10:09:00 8 Gilmer, Diana school district.

10:09:03 9 THE COURT: Ms. Jones, hold the microphone a
10:09:05 10 little closer.

10:09:06 11 JUROR JONES: I'm sorry.

10:09:06 12 THE COURT: Thank you.

10:09:08 13 JUROR JONES: Cheryl Jones, Gilmer, Texas. I have
10:09:09 14 one child. I'm employed at Christus DeHaven Eye Center.
10:09:15 15 I've been there about 17 years. My education is high
10:09:18 16 school and some college certifications.

10:09:21 17 Spouse is Danny Jones. He works for East Texas
10:09:25 18 Machine Works. He's been there about 25 years.

10:09:28 19 And my prior would be criminal case, and I'm not
10:09:33 20 sure how long ago that was.

10:09:35 21 THE COURT: It's been quite a few years?

10:09:37 22 JUROR JONES: It has.

10:09:38 23 THE COURT: Thank you, ma'am.

10:09:39 24 Next is No. 3, Ms. Harris.

10:09:42 25 JUROR GAYLE HARRIS: Good morning. My name is

10:09:44 1 Gayla Harris. And I live in Pittsburg. I have three grown
10:09:46 2 sons. I'm semi-retired. I worked at Lakeside Baptist
10:09:54 3 Church in Canton, Texas, for 10 years. I have an Associate
10:09:58 4 of Arts degree in business.

10:10:00 5 My spouse's name is Kyle Harris. And he is a
10:10:03 6 captain for the Mesquite Fire Department in Mesquite,
10:10:06 7 Texas. And he's been there close to 20 years.

10:10:09 8 And I have no prior jury service.

10:10:10 9 THE COURT: All right. Thank you, ma'am.

10:10:11 10 Next is Panel Member No. 4.

10:10:14 11 JUROR JOHNS: My name is Travis Johns. I live in
10:10:17 12 Hughes Springs, Texas. I have two children. One is a
10:10:21 13 senior in high school, one is a sophomore. I work for
10:10:24 14 Christus Good Shepherd as a registered nurse. I also work
10:10:27 15 at UT Health in their Trauma Unit. Christus, I work in the
10:10:34 16 surgical oncology. A little over a year on both. I have
10:10:36 17 my Associate's degree in nursing. I'm working on my
10:10:38 18 Bachelor's right now.

10:10:40 19 My wife's name is Melissa Jones. She's a dental
10:10:44 20 hygienist for East Texas Children's Dentistry in
10:10:45 21 Mt. Pleasant. She's worked there a little over 10 years.

10:10:47 22 And I served on one jury case, and that was a
10:10:49 23 criminal.

10:10:50 24 THE COURT: All right. Thank you, sir.

10:10:55 25 No. 5 is next, Ms. Fisher.

10:10:55 1 JUROR FISHER: My name is Pamela Fisher. I have
10:10:58 2 two grown children. I also have a stepdaughter who is
10:11:01 3 grown. I'm currently not employed, thinking of -- retiring
10:11:06 4 is my status is what it should be. I was a nurse, and I've
10:11:11 5 been a nurse since '96. I went to high school here in
10:11:16 6 Marshall. I graduated from Kilgore Junior College.

10:11:21 7 My spouse is Richard Fisher. He's also retired.
10:11:25 8 And he's retired from a mining company in Tatum. He worked
10:11:32 9 there for 35 years.

10:11:34 10 And I have had prior jury service. One was a
10:11:38 11 mental incompetency case, and I've also been here in this
10:11:44 12 court. And I don't know what kind of case you would call
10:11:47 13 it, but...

10:11:49 14 THE COURT: How long ago was that that you
10:11:50 15 appeared in this court and served on a jury?

10:11:53 16 JUROR FISHER: I don't know, six or seven years
10:11:55 17 ago.

10:11:55 18 THE COURT: Okay. Thank you, ma'am.

10:11:59 19 All right. Next is Mr. Meade, No. 6.

10:12:02 20 JUROR MEADE: Name is Jeffery Meade. I live in
10:12:04 21 Naples, Texas. I have one eight-year-old son. Currently
10:12:09 22 employed with Sandlin Chevrolet in Mt. Pleasant, body shop
10:12:16 23 estimator. Been there right at 10 years. I have an
10:12:20 24 Associate's degree in accounting from NTCC.

10:12:23 25 My wife is Holly Meade. She's retired --

10:12:27 1 medically retired Air Force and currently employed with Mt.
10:12:32 2 Pleasant ISD as a computer technician. Been there -- she's
10:12:35 3 fixing to be there 10 years, as well.

10:12:36 4 One criminal drug case in Titus County.

10:12:39 5 THE COURT: How long ago was that, sir?

10:12:42 6 JUROR MEADE: Seven, eight years.

10:12:43 7 THE COURT: All right. Thank you very much.

10:12:46 8 Next is No. 7.

10:12:48 9 JUROR NILSSON: Good morning. My name is Aaron
10:12:50 10 Nilsson. I'm from Daingerfield, Texas. I have three
10:12:53 11 children, an 11-year-old daughter, 12-year-old daughter,
10:12:57 12 15-year-old son. I work at WOI Petroleum, where my mother
10:13:01 13 and I started the company in '98 and sold it in 2016, so I
10:13:07 14 work for the -- the new owner. I have a high school
10:13:09 15 education.

10:13:10 16 My wife's name is Meredith Nilsson. She owns and
10:13:15 17 operates a salon in downtown Daingerfield. And she bought
10:13:15 18 that from the previous owner in '13.

10:13:18 19 And I have no prior service as far as jury is
10:13:20 20 concerned.

10:13:21 21 THE COURT: Thank you, sir.

10:13:21 22 And we'll ask the Court Security Officer to carry
10:13:24 23 the microphone around to Panel Member No. 8, Ms. McDonald.

10:13:29 24 JUROR MCDONALD: My name is Karen McDonald. I
10:13:33 25 live in Hallsville, Texas. I have no children. I'm

10:13:36 1 retired. I used to work at Blue Cross Blue Shield as a
10:13:39 2 claims examiner. I worked there for 12 years. High school
10:13:43 3 graduation -- graduate.

10:13:44 4 My spouse's name is John McDonald. He is retired
10:13:47 5 from LeTourneau. He used to be an application engineer.
10:13:52 6 He worked there for about 12 years. And I've served on one
10:13:55 7 jury here in district -- in this courthouse back in '84,
10:14:00 8 '85.

10:14:01 9 THE COURT: That's fine. That long ago, it
10:14:04 10 doesn't matter. If you'll pass the microphone to No. 9.

10:14:10 11 JUROR MANNING: Hi. My name is Rose Manning. I
10:14:13 12 live in Elysian Field, Texas, off of 31. I have no kids.
10:14:20 13 I work at Genpak Corp. -- cups -- plastic plates and cups.
10:14:28 14 That's what I work with. I've been there for 10 years. I
10:14:31 15 had a high school education.

10:14:36 16 My spouse name, Willie Manning. He retired from
10:14:39 17 Tyson Foods in Carthage.

10:14:43 18 I have no other --

10:14:46 19 THE COURT: No jury service, ma'am?

10:14:47 20 JUROR MANNING: No.

10:14:48 21 THE COURT: Okay. Thank you.

10:14:49 22 Next is No. 10, Ms. Walker.

10:14:52 23 JUROR WALKER: My name is Laney Walker. I live in
10:14:55 24 Daingerfield, Texas. I have one son, and currently
10:14:58 25 pregnant with our second child. I work at Healthcare

10:15:01 1 Express. It's an urgent care clinic. I'm a registered
10:15:05 2 nurse. I've worked there for about five years. I have two
10:15:09 3 Associate's degrees from NTCC in Mt. Pleasant.

10:15:13 4 My husband's name is Cameron Walker. He currently
10:15:13 5 works for the City of Marshall as a firefighter paramedic.
10:15:18 6 Been there for about four years. And I have no prior jury
10:15:19 7 services.

10:15:20 8 THE COURT: All right. Thank you, ma'am.

10:15:21 9 Next is No. 11, Mr. Rankin.

10:15:24 10 JUROR RANKIN: My name is -- excuse me -- my name
10:15:28 11 is Josh Rankin. I have six kids. I'm divorced. I have
10:15:34 12 three with my first wife and three with my second wife. My
10:15:36 13 oldest is 18, and I have twin nine-month-olds at home. So
10:15:40 14 anyways, I'm -- I'm from Hallsville. I work at Hallsville
10:15:45 15 at the high school. I coach and teach. I've been there
10:15:48 16 for three years. I got my Master's and Bachelor's at
10:15:54 17 Southern Arkansas University.

10:15:55 18 My wife's name is Christi, and she's -- currently
10:15:58 19 is staying at home, but she has worked as a doctor's
10:16:00 20 assistant.

10:16:04 21 And this is my -- I have no prior service.

10:16:08 22 THE COURT: All right, sir. Thank you.

10:16:09 23 No. 12 is next.

10:16:10 24 JUROR KASSIDY HARRIS: My name is Kassidy Harris.
10:16:15 25 I live in Pittsburg, Texas. I don't have any kids. I'm a

10:16:20 1 missions and discipleship pastor at First Baptist Church in
10:16:24 2 Pittsburg. I've worked there about six-and-a-half years.
10:16:24 3 I have a high school education, a Bachelor's degree, and
10:16:29 4 Master's degree.

10:16:30 5 My spouse's name is Codi CheyAnne Harris. She's a
10:16:34 6 labor and delivery nurse at Titus Regional, and she's
10:16:38 7 worked there about five years. And I have never served on
10:16:41 8 a jury.

10:16:41 9 THE COURT: Thank you.

10:16:41 10 No. 13 is next, Mr. Richardson.

10:16:46 11 JUROR RICHARDSON: Good morning, David Richardson.
10:16:47 12 I live here in Marshall. I have two grown children and
10:16:51 13 three step grown children. I don't like the word "step."
10:16:55 14 They're my children. I worked at Eastman Chemical in
10:17:00 15 Longview for 40 years. And I -- I have a high school
10:17:04 16 education.

10:17:04 17 My wife is Kerry Richardson. She's a registered
10:17:09 18 nurse here at Christus Good Shepherd for 16 years.

10:17:11 19 And I have served on a criminal case, probably six
10:17:13 20 to eight years ago.

10:17:14 21 THE COURT: Where was that, sir?

10:17:15 22 JUROR RICHARDSON: It was here in Harrison County.

10:17:17 23 THE COURT: All right. Thank you very much.

10:17:18 24 Ms. Pate is next, No. 14.

10:17:21 25 JUROR PATE: Lara Pate. I'm from Naples and I

10:17:24 1 have three kids. I work at Pewitt CISD. I've been there
10:17:29 2 for three years. Well, no, that's my second year back
10:17:33 3 there, sorry.

10:17:34 4 THE COURT: What do you do at Pewitt?

10:17:36 5 JUROR PATE: I teach second grade.

10:17:38 6 THE COURT: Thank you.

10:17:40 7 JUROR PATE: I have a Master's in special
10:17:42 8 education.

10:17:43 9 My husband is Adam Pate, and he's a rural mail
10:17:49 10 carrier for Omaha for about three years.

10:17:52 11 And I have never served on a jury.

10:17:54 12 THE COURT: All right. Thank you.

10:17:55 13 And we'll ask the Court Security Officer to carry
10:17:58 14 the mic around to Panel Member No. 15, Ms. Shepard.

10:18:01 15 JUROR SHEPARD: My name is Christie Shepard. I
10:18:04 16 live here in Marshall. I have two teenage children. I
10:18:07 17 work for Texas Health and Human Services Commission as a
10:18:11 18 case manager. I have worked there for 25 years. I have a
10:18:15 19 Bachelor of Science degree from East Texas Baptist
10:18:18 20 University here in Marshall.

10:18:19 21 My spouse is Jason Shepard. He is a draftsman for
10:18:24 22 MTX Surveying here in Marshall, recently started there.
10:18:29 23 They merged with his previous employer ArkLaTex Surveying.

10:18:36 24 I served on a criminal case probably seven or
10:18:40 25 eight years ago here in Harrison County.

10:18:40 1 THE COURT: Thank you, ma'am. No. 16 is next.

10:18:43 2 JUROR HILGENFELD: Hi I'm Karen Hilgenfeld. I
10:18:46 3 live in Omaha. I work for Cable Interiors, which is a --
10:18:54 4 and I worked for them about 20 years. I do the finances.
10:18:58 5 We do data and voice cabling, and I'm not sure if this is
10:19:03 6 appropriate, I need to say that 90 percent of our income
10:19:07 7 and our major customer is Wells Fargo.

10:19:15 8 THE COURT: That will come out.

10:19:16 9 JUROR HILGENFELD: So I've worked there about 20
10:19:22 10 years.

10:19:22 11 THE COURT: What about education?

10:19:24 12 JUROR HILGENFELD: I am a high school dip -- I
10:19:28 13 have my high school diploma. I've had some accounting in
10:19:31 14 college.

10:19:32 15 My spouse is Walter Hilgenfeld. He lives in Omaha
10:19:37 16 also. And he is a retired AT&T employee for about the last
10:19:44 17 seven years.

10:19:44 18 And I was on a criminal case in Dallas about 20
10:19:53 19 years ago.

10:19:53 20 THE COURT: All right. Thank you, ma'am.

10:19:55 21 No. 17 is next, Ms. Brown.

10:19:57 22 JUROR TRACEY BROWN: My name is Tracey Brown, and
10:19:59 23 I am from Longview, Texas. I have two children. I am the
10:20:03 24 department supervisor of the Home Depot. I have worked
10:20:08 25 there for almost 17 years. I have some college.

10:20:12 1 I have no spouse.

10:20:13 2 And I've never had any prior jury service.

10:20:17 3 THE COURT: Okay. Thank you, ma'am. No.

10:20:20 4 18, Mr. Allbritton.

10:20:22 5 JUROR ALLBRITTON: Henry Allbritton. I live in

10:20:24 6 Gilmer, Texas. I have two children. I own Allbritton

10:20:28 7 Timber in Gilmer for the last 20 years. I have a 12th

10:20:34 8 grade education.

10:20:35 9 I have no spouse.

10:20:37 10 And I've never served on a jury before.

10:20:38 11 THE COURT: All right. Sir. Thank you.

10:20:40 12 Next will be Panel Member No. 19, Mr. Pickens.

10:20:46 13 JUROR PICKENS: My name is Paul Pickens. I have

10:20:49 14 four children total. Place of employment currently is

10:20:54 15 Steel Line Rail Service where we do railcar inspections.

10:20:58 16 I've been there with them about nine months now. I have a

10:21:02 17 high school education.

10:21:03 18 My spouse's name is Amy Pickens. She works at

10:21:06 19 Trinity Rail in Longview as a recruiter. She's been there

10:21:11 20 about five years now.

10:21:14 21 And I have no prior jury service.

10:21:15 22 THE COURT: Thank you, sir.

10:21:18 23 Next is No. 20, Mr. Staley.

10:21:22 24 JUROR STALEY: Hi, my name is Mervin Staley. I

10:21:26 25 live in Bloomburg, Texas. I have two children and a

10:21:27 1 stepchild. They're all grown. I've worked at Mid South
10:21:31 2 Distributing for 19 years in Texarkana. I have a high
10:21:35 3 school diploma.

10:21:36 4 My wife is a RN. Her name is Lisa Staley. She
10:21:43 5 works from home for an insurance company, and it just left
10:21:43 6 my mind what the name of the insurance company is but...

10:21:45 7 And I have no prior jury service.

10:21:48 8 THE COURT: All right, sir.

10:21:49 9 No. 21 is next.

10:21:50 10 JUROR MAWER: Nathan Mawer. I live in Hallsville.
10:21:55 11 I have three kids. I work for Weatherford International.
10:21:59 12 I'm the East Texas/North Louisiana operation's manager, I
10:22:03 13 also have a small home building company. I've been at
10:22:07 14 Weatherford almost eight years. I've got a Bachelor's
10:22:12 15 degree in business management, minor in construction
10:22:15 16 science.

10:22:15 17 My wife's name is Caitlin Mawer. She's a
10:22:19 18 stay-at-home mom. And I have no prior jury service.

10:22:22 19 THE COURT: All right. Thank you.

10:22:23 20 No. 22 is next, Mr. Neeley.

10:22:26 21 JUROR NEELEY: Yes, my name is Chad Neeley. I'm
10:22:29 22 from Pittsburg, Texas. I have one daughter that's 17
10:22:34 23 months old. I work for Pittsburg ISD as an ag science
10:22:40 24 teacher. I've been there for roughly going on four years
10:22:43 25 now. My degree is agriculture business from Texas A&M

10:22:47 1 University at Commerce.

10:22:49 2 My spouse's name is Lindsey Neeley. She's a
10:22:52 3 teacher, as well. She's been there teaching for 11 years
10:22:56 4 now.

10:23:00 5 And I went through a criminal jury selection, but
10:23:04 6 the case didn't go to trial.

10:23:07 7 THE COURT: All right, sir. Thank you.

10:23:09 8 No. 23 is next, Ms. Mize.

10:23:12 9 JUROR MIZE: I'm Atrelle Mize. I live in
10:23:19 10 Longview. I have five children. They're all grown. I
10:23:21 11 currently work for a home health agency in Henderson, but I
10:23:26 12 retired from Good Shepherd in Longview after 44 years. I
10:23:30 13 graduated from Methodist School of Nursing in Dallas.

10:23:34 14 And I'm a widow.

10:23:36 15 And I have no prior jury service.

10:23:38 16 THE COURT: Thank you, ma'am.

10:23:39 17 We'll pass that microphone to Panel Member No. 24,
10:23:48 18 Mr. Terry.

10:23:49 19 JUROR TERRY: My name is Cooper Terry. I have a
10:23:52 20 Gilmer address, but all the activities that we do are in
10:23:54 21 Longview; work, school, and all that. I have three boys;
10:23:56 22 20, 18, and 14. I work at a company called Fastenal. I've
10:24:00 23 been there for 27 years. I'm a district manager. And
10:24:04 24 I've -- I've done that for 17. I graduated from SFA in
10:24:11 25 '91. I have a BBA in finance.

10:24:11 1 My wife is Debbie Terry. She's in education. She
10:24:14 2 works at the central office at Longview ISD -- or, excuse
10:24:18 3 me, Pine Tree ISD -- that was a bad thing -- Pine Tree ISD,
10:24:22 4 and she's been there for about 26 years.

10:24:25 5 And I've served on a traffic court one time back
10:24:27 6 in Longview about 15 years ago.

10:24:29 7 THE COURT: All right. Thank you. If you'll pass
10:24:31 8 the microphone to No. 25.

10:24:33 9 JUROR STOBAUGH: Good morning. My name is Linda
10:24:35 10 Sue Stobaugh. I live on the outskirts of Marshall. I have
10:24:35 11 one grown daughter, three grandchildren, two grown
10:24:43 12 stepchildren with four grandchildren. I have retired from
10:24:48 13 the medical field. I worked at East Texas Baptist -- East
10:24:52 14 Texas Border Health Clinic. We opened the doors in 2004.
10:24:56 15 I am now working for myself. I'm a Mary Kay beauty
10:25:01 16 consultant, independent.

10:25:03 17 My education, I graduated from Marshall High
10:25:06 18 School. I went to the Oscar B Jones nursing school here in
10:25:11 19 Marshall. Also, took accounting principle I and II at
10:25:18 20 Harris County Community College in Houston.

10:25:20 21 My spouse's name is Jerry W. Stobaugh, Sr. He
10:25:26 22 worked for the Union Pacific for 38 years before he
10:25:29 23 retired, and then it became Union Pacific.

10:25:32 24 And I have never served.

10:25:33 25 THE COURT: All right.

10:25:37 1 JUROR STOBAUGH: Thank you.

10:25:38 2 THE COURT: Thank you, ma'am. Next is No. 26,
10:25:40 3 Ms. Black.

10:25:40 4 JUROR BLACK: My name is Lorie Black. I live here
10:25:42 5 in Marshall, Texas. I have two grown children. I am a real
10:25:45 6 estate agent for Century 21, and I've been there for about
10:25:49 7 a year -- four years, I'm sorry. I have some college with
10:25:52 8 some real estate certification.

10:25:54 9 My spouse's name is Kenny Black. He works for
10:25:58 10 LATX, which is an oil and gas operation's company. He is
10:26:01 11 the general manager there, and he's been there for about a
10:26:04 12 year.

10:26:05 13 And I have no prior jury service.

10:26:06 14 THE COURT: Thank you, ma'am.

10:26:07 15 No. 27, Ms. Callaway.

10:26:10 16 JUROR CALLAWAY: My name is Kim Callaway. I live
10:26:13 17 in Queen City, and I have two grown children. I work at
10:26:18 18 Queen City ISD as a second grade teacher. I've been there
10:26:21 19 for 24 years. I have a Bachelor's degree from Texas A&M in
10:26:27 20 Texarkana.

10:26:27 21 I have no spouse.

10:26:29 22 And I have no prior jury service.

10:26:33 23 THE COURT: All right. Thank you.

10:26:35 24 And No. 28, Ms. Brown.

10:26:37 25 JUROR ALANA BROWN: My name is Alana Brown. I

10:26:40 1 live in Diana. I have two 19-year-old sons who are working
10:26:45 2 on being grown. I work for Pace Opportunity Centers in
10:26:48 3 Longview as a case coordinator. I've worked there for
10:26:51 4 about two months. I have a Bachelor's degree in business
10:26:54 5 and management from NC State.

10:26:57 6 My spouse's name is Jim Brown. He works for
10:27:00 7 SWEPCO AEP as a substation supervisor. He's worked for AEP
10:27:06 8 for over 25 years.

10:27:07 9 I served on a criminal case, I believe it was, it
10:27:11 10 was about 2005 in Ohio.

10:27:13 11 THE COURT: All right. Thank you, ma'am.

10:27:14 12 Thank you, ladies and gentlemen.

10:27:19 13 Now, I need to tell you a couple more things
10:27:21 14 before I turn the questioning over to the lawyers.

10:27:24 15 The jurors that are actually selected to serve in
10:27:27 16 this case will serve in the role as the judges of the
10:27:31 17 facts. And the jurors selected will make the sole
10:27:34 18 determination about what the facts are in this case.

10:27:37 19 Now, my job as the Judge is to rule on questions
10:27:41 20 of law, evidence, procedure, to maintain the decorum of the
10:27:46 21 courtroom, and to oversee an efficient flow of the trial
10:27:48 22 and the evidence.

10:27:49 23 Also, I want to say a couple things to you about
10:27:52 24 our judicial system that hopefully will put things in a
10:27:56 25 proper perspective for each of you.

10:27:57 1 In every jury trial, besides the actual parties
10:28:02 2 themselves, there are always three participants, the jury,
10:28:06 3 the judge, and the lawyers.

10:28:08 4 With regard to the lawyers, I think it's important
10:28:10 5 for each of you to understand that our American judicial
10:28:14 6 system is an adversary system, which simply means that
10:28:19 7 during a trial, each of the parties will seek to present
10:28:22 8 their respective cases to the juries -- to the jury in the
10:28:26 9 very best light possible.

10:28:27 10 Now, it's no surprise to any of you that lawyers
10:28:31 11 are sometimes criticized in the public and in the media,
10:28:34 12 but the Court's observed that at least some of that
10:28:37 13 criticism is a result of a basic misunderstanding about our
10:28:41 14 adversary system in which the lawyers act as advocates for
10:28:46 15 the competing parties.

10:28:48 16 And as an advocate, a lawyer is ethically and
10:28:51 17 legally obligated to zealously assert his or her client's
10:28:56 18 position under the rules of our adversary system. And by
10:29:00 19 presenting the best case possible on behalf of their
10:29:03 20 clients, the lawyers hopefully will enable the jury to
10:29:09 21 better weigh the relevant evidence, to determine the truth,
10:29:12 22 and to arrive at a just verdict based on that evidence.

10:29:15 23 Now, this system of justice, this adversary
10:29:19 24 system, has served our nation well for over 200 years, and
10:29:22 25 America's lawyers have been and will continue to be an

10:29:25 1 indispensable part of the process.

10:29:29 2 So as we go forward, even though it's possible
10:29:31 3 over the course of the trial you may see me frown or even
10:29:36 4 growl at the lawyers from time to time, it's simply because
10:29:38 5 I'm trying to make sure that their advocacy doesn't get
10:29:42 6 outside the boundaries of our adversary system. But you
10:29:45 7 should keep in mind, they are doing their jobs, and I think
10:29:49 8 it's important for all of you to be aware of that as we go
10:29:52 9 forward.

10:29:52 10 Also, ladies and gentlemen, over the course of the
10:29:54 11 trial, I'm going to do my very best to make sure that none
10:29:58 12 of you that are on the jury have any idea about what I
10:30:02 13 think about the evidence in this case, because determining
10:30:07 14 what the facts are based on that evidence is the job of the
10:30:11 15 jury over the course of this trial. It is not my job.

10:30:14 16 And those of you that are selected on the jury
10:30:16 17 should not take any expressions that you see or think you
10:30:21 18 see or any comments that you hear or think you hear from me
10:30:24 19 as being something to consider as a factor in making the
10:30:28 20 ultimate decision about what the facts are in this case.

10:30:31 21 Now, at this time, the lawyers will have an
10:30:35 22 opportunity to make their presentations and question the
10:30:38 23 members of the jury panel.

10:30:39 24 We'll begin with the Plaintiff. Mr. Bunt, you may
10:30:43 25 address the panel on behalf of the Plaintiff.

10:30:44 1 MR. BUNT: Thank you, Your Honor.

10:30:47 2 THE COURT: And you'd like a warning at five
10:30:49 3 minutes, correct?

10:30:50 4 MR. BUNT: Yes, Your Honor. When I have five
10:30:51 5 minutes left. I appreciate it.

10:30:53 6 THE COURT: All right. You may proceed.

10:30:54 7 MR. BUNT: Thank you, Your Honor.

10:30:54 8 Good morning, again, ladies and gentlemen. As I
10:30:57 9 mentioned to you, my name is Chris Bunt. It's my pleasure
10:31:00 10 to be here today representing the Plaintiff, USAA, in this
10:31:06 11 case.

10:31:06 12 You've graciously given us a lot of information
10:31:11 13 about yourselves. We really appreciate that. We
10:31:12 14 appreciate the jury questionnaire forms you've turned in.
10:31:12 15 I'll just briefly give you the same information about me.

10:31:15 16 I grew up in Hallsville. I graduated from high
10:31:18 17 school there. My wife, Celia, also graduated from high
10:31:21 18 school there. We've been living in Tyler for the last 26
10:31:25 19 years.

10:31:27 20 I have a law practice over there, and Celia works
10:31:30 21 as the office manager at our firm. We have two kids. My
10:31:35 22 daughter is 17, and my son is 14.

10:31:38 23 And I have been called on a number of occasions
10:31:41 24 for jury service but have never actually been on a jury
10:31:44 25 panel.

10:31:45 1 So you're going to hear a lot more about this case
10:31:49 2 as -- as the week progresses. But I want to give you just
10:31:53 3 a very brief overview.

10:31:54 4 So this case involves two United States patents
10:31:59 5 that are owned by my client, USAA. And these patents
10:32:05 6 relate to depositing checks using your smartphone or mobile
10:32:09 7 device.

10:32:09 8 So before this invention, if you wanted to deposit
10:32:14 9 a check, you'd go to the bank teller or to the ATM or you
10:32:18 10 might have one of these very expensive commercial check
10:32:21 11 scanners.

10:32:22 12 USAA invented the use of consumer devices, like
10:32:29 13 smartphones, enabling them to take high quality check
10:32:33 14 images so that the check could be deposited remotely and so
10:32:37 15 that fraud detection could be performed in a real-time
10:32:43 16 during the process.

10:32:43 17 So that's the case in a nutshell. And we allege
10:32:46 18 that Wells Fargo is using our patented technology in their
10:32:50 19 own product. In patent cases, this sort of trespassing on
10:32:54 20 property is called infringement.

10:32:58 21 Now, Wells Fargo denies that it is infringing or
10:33:01 22 trespassing on our property. And, indeed, Wells Fargo also
10:33:05 23 claims even if it is infringing, the patents are invalid,
10:33:09 24 that is, that they should not have been issued by the
10:33:12 25 Patent Office.

10:33:12 1 And then, finally, Wells Fargo claims even if it's
10:33:16 2 infringing, even if the patents are valid, they're really
10:33:20 3 not worth that much money.

10:33:22 4 So as His Honor told you, the purpose of voir dire
10:33:27 5 is to give us a chance to talk with you directly to see if
10:33:31 6 this is the right case for you, to see if you're starting
10:33:34 7 out with any life experiences, any likes or dislikes that
10:33:39 8 might make it difficult for you to sit on this jury.

10:33:41 9 So let me start with that. In my experience, I've
10:33:43 10 found that, generally speaking, most people fall within two
10:33:51 11 groups when it comes to their attitudes about patents.

10:33:54 12 The first group, people are -- are people who
10:33:57 13 think that patents are a good thing, that they encourage
10:34:02 14 innovation, that innovation is a good thing to make
10:34:04 15 advances in products, that without patent protection, a lot
10:34:09 16 of research and development would not take place. That's
10:34:15 17 Group No. 1, pro patent.

10:34:16 18 And then Group No. 2 are folks who believe that
10:34:20 19 patents should not be protected by law, that patents are
10:34:24 20 maybe an archaic system, that patents don't really make
10:34:27 21 sense, and it doesn't make sense to give a 20-year monopoly
10:34:31 22 when -- on -- on a patent when technology is changing so
10:34:37 23 rapidly these days; the thought being here with this group,
10:34:41 24 just because patents were a good idea when the Constitution
10:34:45 25 was being framed doesn't mean that they're still a good

10:34:49 1 idea now.

10:34:49 2 Let me start on the first row -- actually let me
10:34:52 3 just start with you, Mr. Bouzek.

10:34:54 4 JUROR BOUZEK: Bouzek.

10:34:55 5 MR. BUNT: Bouzek.

10:34:57 6 JUROR BOUZEK: Bouzek.

10:34:57 7 MR. BUNT: Bouzek. Mr. Bouzek.

10:34:59 8 JUROR BOUZEK: It's Bouzek.

10:35:00 9 MR. BUNT: Bouzek.

10:35:02 10 JUROR BOUZEK: Correct.

10:35:03 11 MR. BUNT: Okay. Thank you, sir.

10:35:05 12 Which group do you think you'd fall in? Do you
10:35:08 13 think you'd be more in Group 1, pro -- pro patent, or do
10:35:13 14 you think you'd fall more in the second category of not
10:35:16 15 thinking they're such a hot idea?

10:35:18 16 JUROR BOUZEK: I would consider myself mainly in
10:35:19 17 the first group.

10:35:20 18 MR. BUNT: All right.

10:35:21 19 And, Ms. Jones, right next to you, how do you feel
10:35:24 20 about that?

10:35:25 21 JUROR JONES: I would say pro -- pro patent.

10:35:28 22 MR. BUNT: Okay. Is there anybody here in the
10:35:30 23 jury box -- let me just see a show of hands -- anybody who
10:35:33 24 feels like they would lean more toward Group No. 2, who
10:35:38 25 feel like maybe patents aren't such a hot idea in this day

10:35:42 1 and time when technology is changing? Anybody?

10:35:45 2 How about over here in the -- the -- outside the
10:35:47 3 jury box, is there anybody who feels that way?

10:35:50 4 If I could -- Mr. Johnston, if we could have the
10:35:58 5 microphone to Ms. Brown in the very back, Ms. Alana Brown.

10:36:07 6 Ms. Brown, I believe you mentioned in your
10:36:09 7 questionnaire form that you -- you had some concerns about
10:36:14 8 medical or maybe pharmaceutical patents. Did I get that
10:36:16 9 right?

10:36:17 10 JUROR ALANA BROWN: I don't remember exactly how I
10:36:19 11 answered. I don't necessarily have any concerns. I think
10:36:23 12 that other than potential of the price increasing because
10:36:30 13 of them -- of medication.

10:36:32 14 MR. BUNT: Would that cause you to start out
10:36:33 15 leaning against patent owners -- anything about that?

10:36:38 16 JUROR ALANA BROWN: No.

10:36:38 17 MR. BUNT: Okay. Is there anybody who feels like
10:36:41 18 they have some views about patents that would cause them to
10:36:44 19 start out leaning against patent owners? I don't see any
10:36:48 20 hands.

10:36:49 21 Okay. Mr. Johnston, if we could come back over to
10:36:51 22 the jury box.

10:36:52 23 Everybody has already heard, and you saw the
10:36:54 24 patent jury video this morning, you know from the patent
10:36:58 25 video that patents are pieces of property. And when the

10:37:03 1 Patent Office issues a patent, it's like a deed that is
10:37:06 2 being issued.

10:37:07 3 So could I see a show of hands in the jury box,
10:37:10 4 how many of you are land owners, whether you own a house or
10:37:15 5 whatever that your piece of land is sitting on?

10:37:17 6 Okay. Let's just go to Ms. Harris -- Gayla
10:37:21 7 Harris -- No. 3, I apologize.

10:37:24 8 Ms. Harris, you own a piece of land?

10:37:28 9 JUROR GAYLE HARRIS: Yes.

10:37:28 10 MR. BUNT: And let me ask you this: If an oil
10:37:30 11 company -- oil and gas company, let's say, is drilling on
10:37:34 12 your property without your permission, would you have any
10:37:38 13 discomfort about going to court to get them off your
10:37:41 14 property?

10:37:41 15 JUROR GAYLE HARRIS: No, I would not.

10:37:42 16 MR. BUNT: Okay. Mr. Johns -- Mr. Travis Johns,
10:37:48 17 No. 4 --

10:37:48 18 JUROR JOHNS: Yes, sir.

10:37:48 19 MR. BUNT: -- how about the same question?

10:37:51 20 JUROR JOHNS: No, I wouldn't -- I wouldn't like it
10:37:52 21 either.

10:37:52 22 MR. BUNT: You don't have any discomfort about
10:37:55 23 going to court?

10:37:56 24 JUROR JOHNS: No.

10:37:57 25 MR. BUNT: Let me ask this: Does anybody feel

10:37:59 1 like intellectual property should be treated differently
10:38:04 2 than physical property, like a piece of land? Anybody in
10:38:07 3 the jury box feel that way?

10:38:09 4 Okay. I forgot to ask over here. Outside the
10:38:13 5 jury box, is there anybody here who feels like, you know
10:38:16 6 what, I just don't feel comfortable with the idea of going
10:38:19 7 to court to protect property rights? Anybody feel that
10:38:23 8 way?

10:38:23 9 Is there anybody over on this side who feels like
10:38:27 10 intellectual property, like a patent, should be treated
10:38:30 11 differently than physical property, like a piece of land?

10:38:34 12 Okay. You're going to hear evidence during this
10:38:41 13 trial about damages, and we're going to put on a financial
10:38:45 14 expert who's going to explain to you the financial benefits
10:38:49 15 that Wells Fargo has received using our property. And we
10:38:56 16 anticipate at the end of the trial asking you if you agree
10:39:00 17 that there's been infringement. And if you agree with our
10:39:03 18 evidence, we're going to ask you to award \$102.8 million.

10:39:09 19 And I'll just tell you that Wells Fargo has an
10:39:11 20 expert, a damage expert, who says even if they infringe,
10:39:14 21 even if the patents are valid, they wouldn't owe any more
10:39:18 22 than \$3.9 million.

10:39:20 23 So my question is, how many of you here in the
10:39:22 24 jury box feel like no matter what the evidence is, even if
10:39:28 25 you were able to find infringement, there's just no way you

10:39:30 1 could ever see yourself writing down a number of a hundred
10:39:34 2 million dollars? Is there anybody here in the jury box who
10:39:37 3 feels that way?

10:39:38 4 Mr. Meade, No. 6, any issues at all with that?

10:39:47 5 JUROR MEADE: No, sir.

10:39:47 6 MR. BUNT: Okay. Mr. Nilsson, how about you?

10:39:50 7 JUROR NILSSON: I believe we have to look at all
10:39:53 8 sides, and, I mean, if it's -- if it's 3 -- 3 million or
10:39:58 9 102 million or something in the middle, you got to weigh it
10:40:01 10 all out like the Judge said earlier.

10:40:03 11 MR. BUNT: Thank you, sir. And let me -- I'll
10:40:05 12 just follow up with that.

10:40:06 13 If you could hand the microphone back.

10:40:07 14 I don't -- I'm not asking anybody here to commit
10:40:11 15 to awarding a hundred million dollars, but I just want to
10:40:13 16 know, if there's evidence to support that award, is there
10:40:16 17 anybody here who feels like they could not ever write down
10:40:20 18 that number? Anybody in the jury box?

10:40:22 19 Anybody over here on this side of the courtroom
10:40:24 20 who feels like -- yes, ma'am, Ms. -- Ms. Hilgenfeld?

10:40:32 21 JUROR HILGENFELD: Let me -- I just have a
10:40:36 22 question.

10:40:37 23 MR. BUNT: Yes, ma'am.

10:40:38 24 JUROR HILGENFELD: I mean, my concern is, doesn't
10:40:41 25 all banks do this -- the same?

10:40:44 1 MR. BUNT: Well, the issue is whether USAA has a
10:40:47 2 patent on it and whether Wells Fargo is using our patent
10:40:50 3 and benefitting from it.

10:40:51 4 JUROR HILGENFELD: So it doesn't matter if any
10:40:54 5 other --

10:40:54 6 MR. BUNT: No, ma'am. So -- but I --

10:40:57 7 JUROR HILGENFELD: So that's the -- that's one of
10:40:59 8 the reasons I would have.

10:41:00 9 MR. BUNT: I appreciate that.

10:41:02 10 JUROR HILGENFELD: And then --

10:41:02 11 THE COURT: We're here -- we're here about this
10:41:04 12 Plaintiff and this Defendant.

10:41:06 13 JUROR HILGENFELD: Okay.

10:41:06 14 THE COURT: And what may happen with other
10:41:08 15 Plaintiffs and other Defendants is not a part of this
10:41:10 16 trial.

10:41:12 17 JUROR HILGENFELD: Okay. I just know that
10:41:13 18 different banks -- anyway. That's -- that was my concern.

10:41:18 19 MR. BUNT: Yes, ma'am. While I've got you,
10:41:21 20 though --

10:41:21 21 JUROR HILGENFELD: Okay.

10:41:21 22 MR. BUNT: -- you very graciously gave us a pretty
10:41:25 23 good bit of information in your jury questionnaire form,
10:41:28 24 and I did actually write down some of that information.
10:41:31 25 You mentioned that Wells Fargo, the Defendant in this case,

10:41:33 1 is a major customer of your employer.

10:41:36 2 JUROR HILGENFELD: Yes, sir.

10:41:36 3 MR. BUNT: And I think you just mentioned, they --
10:41:39 4 they account for about 90 percent of the revenues or income
10:41:42 5 of your company that you work for.

10:41:44 6 JUROR HILGENFELD: Yes, sir.

10:41:45 7 MR. BUNT: And I believe you said that they've
10:41:48 8 been a major customer for 20 years.

10:41:50 9 JUROR HILGENFELD: At least 20 years.

10:41:52 10 MR. BUNT: And I think you also said in your
10:41:54 11 questionnaire form you felt like it would be a conflict of
10:41:57 12 interest for you to serve on this jury.

10:41:58 13 JUROR HILGENFELD: Yes, because I wasn't sure --

10:42:01 14 MR. BUNT: No, that's fine --

10:42:02 15 JUROR HILGENFELD: -- the way it was going.

10:42:04 16 MR. BUNT: No, I -- I certainly appreciate it.
10:42:05 17 Let's just be frank, would it put you in a bad situation to
10:42:11 18 serve on this jury?

10:42:12 19 JUROR HILGENFELD: I have reservations that way,
10:42:15 20 yes.

10:42:15 21 MR. BUNT: Is my -- is my client starting off a
10:42:18 22 little bit behind of Wells Fargo simply because you deal
10:42:22 23 with Wells Fargo on a regular basis at your employment?

10:42:26 24 JUROR HILGENFELD: Yes, sir.

10:42:27 25 MR. BUNT: Thank you. Would you find it a little

10:42:29 1 hard to be fair and impartial to USAA, given your
10:42:32 2 particular situation?

10:42:33 3 JUROR HILGENFELD: Possibility. Probability --

10:42:37 4 MR. BUNT: I'm sorry, what's the last thing you
10:42:40 5 said?

10:42:40 6 JUROR HILGENFELD: Probability.

10:42:41 7 MR. BUNT: Probability.

10:42:42 8 JUROR HILGENFELD: Yeah, if I'm being honest
10:42:44 9 because -- I mean, I would be fair as much as I could --

10:42:50 10 MR. BUNT: Yes, ma'am.

10:42:52 11 JUROR HILGENFELD: -- and listen to everything,
10:42:52 12 but I just -- I'm uneasy with working for them and -- but I
10:43:01 13 have family that uses USAA --

10:43:02 14 MR. BUNT: Yes, ma'am.

10:43:04 15 JUROR HILGENFELD: -- so I don't know.

10:43:06 16 MR. BUNT: Would it -- let me ask this: Would it
10:43:07 17 be a difficult conversation for you to go back to the
10:43:11 18 office after a jury trial and say you had sat on a case and
10:43:16 19 you rendered a verdict against Wells Fargo?

10:43:18 20 JUROR HILGENFELD: Yes, sir.

10:43:19 21 MR. BUNT: Thank you.

10:43:20 22 JUROR HILGENFELD: Because my name is on a lot of
10:43:22 23 checks.

10:43:23 24 MR. BUNT: I -- I appreciate your candor. I
10:43:24 25 really do. Thank you, ma'am.

10:43:26 1 JUROR HILGENFELD: Thank you.

10:43:32 2 MR. BUNT: I want to ask you some questions about
10:43:34 3 invalidity. There's two different things you're going to
10:43:36 4 hear about in this trial, infringement and invalidity. And
10:43:40 5 USAA, my client, has to prove infringement, that is, that
10:43:45 6 Wells Fargo is using our property without our permission.
10:43:47 7 And we have to prove that by a preponderance of the
10:43:49 8 evidence. And that's a burden we gladly accept.

10:43:52 9 Wells Fargo, on the other hand, has the burden to
10:43:56 10 prove that the patents are invalid. It's not our burden to
10:44:00 11 prove that the patents are valid. It's their burden to
10:44:05 12 prove that they are invalid. And the burden of proof that
10:44:08 13 they would have, if they want to do that, is to show by
10:44:12 14 clear and convincing evidence.

10:44:12 15 Now, His Honor told you a little bit ago,
10:44:16 16 preponderance of the evidence means tipping the scales,
10:44:18 17 clear and convincing evidence means a more substantial
10:44:21 18 burden of proof.

10:44:21 19 Is there anybody here -- and let's just start with
10:44:24 20 the jury box -- who feels like that is unfair that we get
10:44:28 21 to prove infringement by a preponderance of the evidence
10:44:35 22 but that Wells Fargo would have to prove invalidity by
10:44:37 23 clear and convincing, that there's a different burden of
10:44:40 24 proof for them? Anybody have an issue with that? Not
10:44:43 25 seeing any hands.

10:44:44 1 Over here on this side of the courtroom, if the
10:44:48 2 Judge tells you that is the burden of proof, is there
10:44:50 3 anybody here who would just have difficulty with that
10:44:52 4 concept?

10:44:53 5 Okay. Thank you.

10:44:54 6 Is -- I didn't tell you much, and you're going to
10:44:57 7 hear a lot more during the trial, but USAA, my client,
10:45:01 8 provides financial services to military and to military
10:45:04 9 families. These services include -- you've probably heard
10:45:08 10 or seen insurance company ads for USAA, but they also
10:45:13 11 provide banking services.

10:45:14 12 Is there anybody here who has had a bad or
10:45:18 13 negative experience with USAA? And let me start in the
10:45:22 14 jury box first? Anybody?

10:45:25 15 Okay. Over on this side, Mr. Mawer, Juror No. 21.

10:45:33 16 JUROR MAWER: Yes.

10:45:33 17 MR. BUNT: Thank you. Did -- did you say that you
10:45:35 18 had a bad experience with USAA?

10:45:39 19 JUROR MAWER: It was good up until -- and I think
10:45:41 20 everybody kind of went up on their rates to the point that
10:45:45 21 we went shopping, but that was it. It wasn't -- it wasn't
10:45:48 22 anything on the services that they provided. We had
10:45:50 23 insurance with our house and our automobiles.

10:45:53 24 MR. BUNT: Okay. All right. Thank you, sir. I
10:45:55 25 appreciate that.

10:45:55 1 Is there anybody else who has had a negative
10:46:02 2 experience with USAA?

10:46:04 3 Okay. Can I just see a show of hands, anybody
10:46:07 4 here on the jury panel who has worked at a bank?

10:46:10 5 Okay. No. 10, Ms. Walker, and let me -- raise
10:46:16 6 your hands high, please. No. 16, Ms. Hilgenfeld.

10:46:22 7 And then on the back, Ms. Lorie Black --

10:46:22 8 JUROR BLACK: Yes.

10:46:25 9 MR. BUNT: -- and then Ms. Brown. Okay. Thank
10:46:30 10 you.

10:46:30 11 Mr. Bouzek, on -- Juror No. 1, did you serve in
10:46:36 12 the military?

10:46:36 13 JUROR BOUZEK: Yes, I did.

10:46:37 14 MR. BUNT: And was that the Air Force?

10:46:39 15 JUROR BOUZEK: Correct.

10:46:40 16 MR. BUNT: And how long did you serve?

10:46:42 17 JUROR BOUZEK: Four years.

10:46:43 18 MR. BUNT: Okay. Thank you for your service. I
10:46:47 19 don't think you said anything about you have USAA, but do
10:46:50 20 you have any family members or friends who have USAA?

10:46:54 21 JUROR BOUZEK: Not to my knowledge.

10:46:55 22 MR. BUNT: Okay. Can I see a show of hands --
10:47:00 23 thank you, sir. I appreciate it.

10:47:02 24 How many of you have used a phone to deposit a
10:47:04 25 check before?

10:47:07 1 Okay. Juror -- if you don't mind, hold them up
10:47:10 2 again one more time. Juror No. 3, 4, 7, 10, 11, and 14,
10:47:18 3 and then 15, 16, 17 -- is that No. 23? Yes, ma'am. And
10:47:26 4 24, 26, and 28. Thank y'all very much.

10:47:31 5 The -- Wells Fargo is being represented by the
10:47:36 6 Winston & Strawn law firm. Mr. Tom Melsheimer here is one
10:47:40 7 of the lawyers at that firm. They have offices all over
10:47:43 8 the country, but his office is in Dallas. I believe you're
10:47:46 9 going to hear from Ms. Williams -- Danielle Williams during
10:47:50 10 opening statement.

10:47:51 11 Is there anybody here who knows Mr. Melsheimer or
10:47:54 12 any of the other folks at Winston & Strawn?

10:47:57 13 Okay. Wells Fargo is also represented by
10:48:03 14 Mr. Wesley Hill of the law firm of Ward Smith & Hill.
10:48:06 15 That's based in Longview.

10:48:08 16 Is there anybody here who knows Mr. Hill or has
10:48:12 17 had any dealings with his law firm?

10:48:13 18 Also, there's some folks at his firm. I'll just
10:48:17 19 list them out. Johnny Ward, Mr. T. John Ward, Mr. Bruce
10:48:22 20 Smith, Claire Henry, Andrea Fair, Brett Miller, and Wendi
10:48:29 21 Cavazos. Anybody here know any of those individuals?

10:48:33 22 Mr. Mike Collins is also assisting them with jury
10:48:34 23 selection. He's based in Tyler. Is there anybody here who
10:48:36 24 knows Mr. Collins?

10:48:44 25 Okay. Could I see a -- well, let me just start

10:48:50 1 with Ms. Gayla Harris, Juror No. 3.

10:48:53 2 I believe you mentioned that you have -- that you
10:48:56 3 bank with Wells Fargo; is that right?

10:48:58 4 JUROR GAYLE HARRIS: Yes. My husband takes care
10:49:05 5 of all of our finances, so I'm trying to remember what we
10:49:10 6 have or if we currently still have...

10:49:13 7 MR. BUNT: Let me just ask it like this: Is there
10:49:16 8 anything about that experience that would start you off
10:49:18 9 leaning more towards Wells Fargo than USAA?

10:49:21 10 JUROR GAYLE HARRIS: No, I didn't even actually
10:49:23 11 remember we had services with them. And my husband said
10:49:26 12 yes, we do -- or we did, so I don't have any good or bad
10:49:31 13 experience.

10:49:31 14 MR. BUNT: Thank you, ma'am. I appreciate that.

10:49:33 15 Mr. Harris, Juror No. 12, did you indicate that
10:49:39 16 you have Wells Fargo banking?

10:49:42 17 JUROR KASSIDY HARRIS: They just have my mortgage.

10:49:44 18 MR. BUNT: All right. How about that, you
10:49:48 19 understand I represent a company that is suing Wells Fargo,
10:49:52 20 you have Wells Fargo for your mortgage insurance company.
10:49:55 21 Is that going to start my client in a worse position than
10:50:03 22 Wells Fargo? Are you going to start off leaning a little
10:50:06 23 bit more towards Wells Fargo?

10:50:08 24 JUROR KASSIDY HARRIS: Absolutely no.

10:50:09 25 MR. BUNT: Thank you, sir. I appreciate that.

10:50:11 1 Mr. Rankin, Juror No. 11, do you also have Wells
10:50:16 2 Fargo banking or have something to do with Wells Fargo?
10:50:19 3 Could you tell me --

10:50:19 4 JUROR RANKIN: Yes, I have Wells Fargo banking.

10:50:21 5 MR. BUNT: Same question to you, how does that
10:50:23 6 make you feel?

10:50:25 7 JUROR RANKIN: I don't really have any personal
10:50:27 8 connection or feelings other than there's none around here.

10:50:29 9 MR. BUNT: There's none --

10:50:31 10 JUROR RANKIN: So I do use the picture -- you
10:50:33 11 know, the phone app.

10:50:35 12 MR. BUNT: Well, let me ask --

10:50:36 13 JUROR RANKIN: Very often.

10:50:38 14 MR. BUNT: -- let me ask this: Would you worry in
10:50:40 15 the back of your head whether if you were to find some sort
10:50:43 16 of verdict in favor of USAA that it might end up somehow
10:50:47 17 down the road costing customers like yourself more money?

10:50:51 18 JUROR RANKIN: I wouldn't think so.

10:50:52 19 MR. BUNT: All right. Thank you, sir. I
10:50:54 20 appreciate that.

10:50:54 21 Mr. Cooper Terry -- Mr. -- Juror No. 24, do you
10:51:06 22 bank with Wells Fargo also?

10:51:07 23 JUROR TERRY: I just have a corporate credit card
10:51:13 24 that I -- it's a company card, so it's my expense card that
10:51:16 25 I use, but it's Wells Fargo.

10:51:17 1 MR. BUNT: Same question I asked Mr. Rankin, how
10:51:20 2 would that make you feel sitting on this jury?

10:51:22 3 JUROR TERRY: No effect.

10:51:23 4 MR. BUNT: Okay. Thank you, sir.

10:51:25 5 Mr. Strube, do we have Mr. Strube on the -- okay.
10:51:32 6 Never mind.

10:51:32 7 Some of you had expressed some feelings -- strong
10:51:42 8 feelings about lawsuits in your questionnaires.

10:51:45 9 Mr. Mawer, Juror No. 21, I believe you indicated
10:51:49 10 that you don't like frivolous lawsuits. Can you tell me a
10:51:53 11 little bit more about that.

10:51:54 12 JUROR MAWER: Ones that really don't have any
10:51:56 13 merit. I didn't know about this case, obviously, but
10:52:00 14 the -- somebody suing somebody for hot coffee or whatever
10:52:04 15 when it has a warning on it, that's pretty much the extent
10:52:06 16 of that.

10:52:07 17 MR. BUNT: Well, you understand that you have a
10:52:10 18 feeling against what you consider to be frivolous lawsuits,
10:52:13 19 and I'm representing somebody who has brought a lawsuit. I
10:52:16 20 certainly don't think there's anything frivolous about this
10:52:18 21 at all.

10:52:19 22 JUROR MAWER: Okay.

10:52:20 23 MR. BUNT: But am I starting off a little bit
10:52:22 24 behind in your mind simply because of those feelings you
10:52:25 25 have about --

10:52:27 1 JUROR MAWER: No, sir.

10:52:27 2 MR. BUNT: -- lawsuits? Thank you, sir.

10:52:30 3 Are there any others, let's say, in the jury box
10:52:33 4 that have strong feelings about lawsuits that would make it
10:52:38 5 difficult for you to sit on this jury panel? Anybody?

10:52:40 6 How about over on this side?

10:52:42 7 Is there anybody on the jury panel over here -- on
10:52:54 8 the jury box who -- who has applied for a patent or has a
10:52:57 9 family member or a friend who has applied for a patent?

10:53:01 10 Yes, ma'am, Ms. Fisher, you said your stepson, I
10:53:07 11 believe; is that right?

10:53:08 12 JUROR FISHER: Yes, sir.

10:53:09 13 MR. BUNT: Can you tell me what -- what sort of
10:53:11 14 patent that was about?

10:53:13 15 JUROR FISHER: It was something -- he worked for
10:53:14 16 the government. It was something that was top secret. So
10:53:18 17 I really don't know a lot about that.

10:53:21 18 MR. BUNT: Okay. Was he able to obtain the
10:53:23 19 patent?

10:53:24 20 JUROR FISHER: I don't remember exactly how that
10:53:26 21 came out, if the government patented it or if he was
10:53:29 22 actually the one that got to patent it.

10:53:31 23 MR. BUNT: Okay. Anything about that experience
10:53:33 24 that'd make it hard to sit on this panel?

10:53:37 25 JUROR FISHER: None.

10:53:37 1 MR. BUNT: Thank you.

10:53:38 2 Ms. -- Ms. Sheryl Redmon -- no, okay.

10:53:45 3 Is there anybody else who has applied for a patent
10:53:48 4 or has a family member or a friend who has applied for a
10:53:52 5 patent or obtained a patent? Is there anybody here who
10:53:56 6 works for companies that own patents?

10:54:01 7 Yes, sir, Mr. Mawer, remind me where you work.

10:54:06 8 JUROR MAWER: Weatherford International, it's an
10:54:08 9 oil and gas company.

10:54:09 10 MR. BUNT: Okay. Do you know how they enforce
10:54:11 11 their property rights, their patent rights?

10:54:13 12 JUROR MAWER: I don't. I've never been involved
10:54:15 13 in it.

10:54:16 14 MR. BUNT: Okay. Thank you.

10:54:17 15 Is there anybody here who has ever been sued?

10:54:21 16 Let's see, in the jury box, ever been a Defendant in a
10:54:24 17 lawsuit? How about over on this side? Anybody?

10:54:28 18 Okay. Mr. Bouzek, your niece -- I keep coming
10:54:35 19 back to you, Juror No. 1. Your niece, you indicated, has a
10:54:37 20 law degree; is that right?

10:54:38 21 JUROR BOUZEK: That's correct.

10:54:41 22 MR. BUNT: And where does she work, if you know?

10:54:44 23 JUROR BOUZEK: I don't know right now.

10:54:46 24 MR. BUNT: Okay. Do you know what kind of law she
10:54:49 25 does?

10:54:49 1 JUROR BOUZEK: Has a medical nature to it.

10:54:53 2 MR. BUNT: Okay. I take it there's nothing about
10:54:55 3 that that will make it hard to sit on this jury?

10:54:57 4 JUROR BOUZEK: No, sir.

10:54:58 5 MR. BUNT: Okay. Ms. Fisher, Juror No. 5, I may
10:55:04 6 have written this down wrong, but did you say that your
10:55:08 7 stepdaughter works at a law office?

10:55:10 8 JUROR FISHER: She did when she was in high
10:55:12 9 school.

10:55:12 10 MR. BUNT: Okay.

10:55:13 11 JUROR FISHER: She -- she doesn't now.

10:55:14 12 MR. BUNT: That doesn't have any bearing; is that
10:55:15 13 right?

10:55:16 14 JUROR FISHER: Right.

10:55:16 15 MR. BUNT: Okay. Thank you.

10:55:17 16 Mr. -- no, let's see, Ms. Cheryl Jones, sorry,
10:55:28 17 Juror No. 2, yes, ma'am. Your daughter, does she work at a
10:55:32 18 law firm?

10:55:32 19 JUROR JONES: Yes.

10:55:33 20 MR. BUNT: Which law firm is that?

10:55:36 21 JUROR JONES: In Longview, Randy Akin.

10:55:37 22 MR. BUNT: Okay. What does she do there for him?

10:55:39 23 JUROR JONES: She's a paralegal.

10:55:40 24 MR. BUNT: Okay. How long has she done that?

10:55:42 25 JUROR JONES: She's done it for 15, something like

10:55:45 1 that.

10:55:45 2 MR. BUNT: Okay. Thank you, ma'am. I sure
10:55:47 3 appreciate that.

10:55:49 4 THE COURT: You have five minutes remaining,
10:55:51 5 counsel.

10:55:51 6 MR. BUNT: Thank you, Your Honor.

10:55:51 7 Are there any jurors here who know one another or
10:55:56 8 who may be related to one another? You'd be surprised how
10:56:01 9 often that shows up.

10:56:05 10 Sorry, yes, sir, No. 6?

10:56:09 11 JUROR MEADE: Yes.

10:56:10 12 MR. BUNT: Tell me who you know.

10:56:12 13 JUROR MEADE: That'd be No. 14 back here,
10:56:16 14 Ms. Pate.

10:56:17 15 MR. BUNT: And how do you -- is it Mr. Richardson
10:56:19 16 that you know --

10:56:19 17 JUROR MEADE: No.

10:56:20 18 MR. BUNT: -- or, no --

10:56:22 19 JUROR MEADE: Ms. Pate.

10:56:23 20 MR. BUNT: Ms. Pate. I apologize. How do you
10:56:27 21 know Ms. Pate?

10:56:28 22 JUROR MEADE: She was older than I was, but we all
10:56:29 23 went to the same high school. And we coached tee ball
10:56:36 24 against each other and so...

10:56:36 25 MR. BUNT: I don't think she liked it when you

10:56:37 1 said she's older than you. Okay. So y'all --- y'all were
10:56:41 2 at the same school together coaching?

10:56:43 3 JUROR MEADE: No, as far as tee ball goes, our
10:56:46 4 kids played against each other, and I mean, we were in the
10:56:48 5 same town.

10:56:49 6 MR. BUNT: Okay. Would -- would that create any
10:56:51 7 difficulties for you in sitting on this jury panel?

10:56:55 8 JUROR MEADE: I don't think so.

10:56:56 9 MR. BUNT: Okay. Anybody else who knows one
10:56:58 10 another on the jury panel?

10:57:01 11 Yes, sir, Mr. Richardson?

10:57:03 12 JUROR RICHARDSON: No. 2, Cheryl, friends. Cheryl
10:57:09 13 Jones.

10:57:09 14 MR. BUNT: Okay. And how do y'all know each
10:57:18 15 other?

10:57:18 16 JUROR RICHARDSON: Just from way past.

10:57:18 17 MR. BUNT: All right.

10:57:20 18 JUROR RICHARDSON: Distant friends. We dated
10:57:21 19 actually for a little while.

10:57:21 20 MR. BUNT: Okay. We're learning lots of
10:57:21 21 information.

10:57:22 22 JUROR RICHARDSON: We lost touch.

10:57:22 23 MR. BUNT: Well, let's see what else we can find
10:57:23 24 out.

10:57:23 25 THE COURT: That's the first time I've heard that

10:57:24 1 one.

10:57:32 2 MR. BUNT: That's right.

10:57:32 3 JUROR RICHARDSON: She said sit down.

10:57:32 4 MR. BUNT: Well, given that past, would it --
10:57:35 5 would that --

10:57:35 6 JUROR RICHARDSON: Not at all.

10:57:36 7 MR. BUNT: -- have some difficulties?

10:57:37 8 JUROR RICHARDSON: Not at all.

10:57:39 9 MR. BUNT: Okay. Who else did we see a hand
10:57:42 10 raised on?

10:57:43 11 No. 12, Mr. Harris, who do you know on the panel?

10:57:45 12 JUROR KASSIDY HARRIS: Yes. Ms. Harris. We're
10:57:46 13 actually not related, but we do attend church together.

10:57:50 14 MR. BUNT: Okay. Anything about that that would
10:57:52 15 make it difficult to sit on the jury panel?

10:57:54 16 JUROR KASSIDY HARRIS: Absolutely not.

10:57:55 17 MR. BUNT: While I've got you, though, let me ask
10:57:58 18 this: If you had a difference of opinion from her, would
10:58:02 19 it be awkward to have that difference of opinion while
10:58:06 20 you're deliberating on a case if you know each other so
10:58:10 21 well from church?

10:58:11 22 JUROR KASSIDY HARRIS: No.

10:58:12 23 MR. BUNT: Okay. Thank you. Who else --

10:58:13 24 JUROR KASSIDY HARRIS: Not for me anyway.

10:58:15 25 MR. BUNT: Let me -- let me go back to Ms. Harris,

10:58:18 1 give you a moment for rebuttal from everybody. Would
10:58:20 2 that -- would that case you any -- any concern?

10:58:26 3 JUROR GAYLE HARRIS: No, not at all.

10:58:28 4 MR. BUNT: Okay. One follow-up question. This
10:58:36 5 invention that USAA invented has to do with a system that
10:58:42 6 can be used with many different consumer devices. Is there
10:58:45 7 anybody here who would find it hard to rule on a case where
10:58:49 8 the system can apply to many different devices, like
10:58:52 9 digital cameras, scanners, or -- or smartphones, iPhones,
10:58:57 10 anything about that that would cause difficulty to you?

10:59:00 11 JUROR NILSSON: Can you repeat the question one
10:59:02 12 more time?

10:59:02 13 MR. BUNT: Sure. This invention has to do with a
10:59:04 14 way of using many different consumer devices to take great
10:59:08 15 pictures that are going to be able to use -- to be used to
10:59:12 16 deposit checks. Is there anything that would make -- about
10:59:15 17 that that would make it hard for you to sit on this jury,
10:59:19 18 ruling on a system that can apply to many different
10:59:24 19 devices? Anything about that, sir?

10:59:27 20 JUROR NILSSON: No, I don't think so. I just
10:59:28 21 wanted to understand your question correctly.

10:59:30 22 MR. BUNT: I appreciate that.

10:59:31 23 One final question, and I'm sure I missed
10:59:34 24 something, if there's some reason you feel like this is not
10:59:37 25 the right case for you, that I've failed to ask you

10:59:41 1 something, and if I had, you would -- it's something that I
10:59:43 2 would really want to know. If for whatever reason you feel
10:59:47 3 like this is not the case for you, please raise your hand.
10:59:49 4 If it's something you don't want to take up in front of
10:59:52 5 everybody, you want to take up privately with the Judge, we
10:59:56 6 can do this. But this is the last chance. If you feel
11:00:00 7 like this is not the right case for you, please raise your
11:00:04 8 hand and let me know.

11:00:05 9 Okay. Thank you so much, ladies and gentlemen. I
11:00:05 10 appreciate your time and attention, and we look forward to
11:00:08 11 putting on our case.

11:00:09 12 THE COURT: Mr. Hill, you may address the panel on
11:00:11 13 behalf of the Defendant.

11:00:11 14 MR. HILL: Thank you, Your Honor.

11:00:15 15 THE COURT: And you'd like a five-minute warning,
11:00:17 16 as well?

11:00:17 17 MR. HILL: Yes, sir, please.

11:00:18 18 THE COURT: All right. You may proceed.

11:00:19 19 MR. HILL: Thank you.

11:00:20 20 Good morning, ladies and gentlemen.

11:00:21 21 As I mentioned to you earlier, my name is Wesley
11:00:25 22 Hill. And to give fair disclosure, the information y'all
11:00:30 23 gave us, I'll give you the same.

11:00:30 24 I'm married. I -- my wife's name is Catherine.
11:00:35 25 We've got a 25-year-old son that's a school teacher in

11:00:38 1 Austin and a 12-year-old little girl that's a 7th grader
11:00:42 2 and a tennis player. I grew up in Murchison over in
11:00:42 3 Henderson County. That's over closer to Athens.

11:00:47 4 My law firm is based in Longview. It's called
11:00:50 5 Ward Smith & Hill, that Mr. Bunt mentioned to you earlier.
11:00:53 6 That's my firm with me and my partners. And along with my
11:00:56 7 co-counsel here, I'm proud to represent Wells Fargo in this
11:01:00 8 case.

11:01:00 9 Now, folks, I only get 30 minutes to talk to you
11:01:04 10 this morning. So I want to spend my time this morning
11:01:07 11 focused on what's most important to me, and that's you,
11:01:12 12 okay?

11:01:12 13 I want to start by saying thank you because I know
11:01:16 14 that jury service is an imposition on your time. I know
11:01:20 15 that it is a pain to have to disrupt your schedule, your
11:01:24 16 life, show up at the courthouse early one morning, sit
11:01:31 17 around, watch videos about things you might not find that
11:01:31 18 interesting, and then have lawyers talk at you for a couple
11:01:34 19 of hours, okay? Not to mention the service and the time
11:01:37 20 imposition that will exist for those of you who serve on
11:01:40 21 this jury. So I wanted to first, right out of the box,
11:01:44 22 tell you, thank you very much for being here. You're what
11:01:47 23 makes the system work.

11:01:48 24 Now, Mr. Bunt had some things to say about USAA's
11:01:52 25 claims in this case. He talks about what their claims in

11:01:55 1 this case are. And because I want to talk to you, all I'm
11:01:59 2 going to say at this point is that Wells Fargo respects
11:02:02 3 USAA, but we disagree with just about everything Mr. Bunt
11:02:09 4 had to say about the claims in these case -- in this case
11:02:13 5 and the patents in this case.

11:02:14 6 And those of you -- that's why we're here is to
11:02:18 7 get to present that dispute. And those of you who serve on
11:02:25 8 this jury are going to get a chance to hear the full story
11:02:28 9 of that dispute and hear why I tell you that we disagree
11:02:31 10 with USAA and look forward to getting to show that to those
11:02:33 11 of you that -- that serve.

11:02:34 12 Now, folks, the reason we go through this process,
11:02:36 13 the reason we take all this time to talk to everybody, you
11:02:40 14 fill out the questionnaires, you answer the questions that
11:02:42 15 the Judge has you stand up and answer, is we're trying to
11:02:45 16 find a jury that's committed to being fair to both sides,
11:02:50 17 okay? Fair to both sides.

11:02:51 18 And so what does that mean? Think about that.
11:02:57 19 Think about if -- if you had an important case, what would
11:03:01 20 it mean for you for the jury to be fair to both sides? And
11:03:05 21 I'll start out with Juror No. 1 here. Mr. Bouzek, let
11:03:11 22 me -- let me ask, what would it mean to you for a jury to
11:03:17 23 be fair to both sides?

11:03:19 24 JUROR BOUZEK: It would be very important to me if
11:03:20 25 I was on trial or my company.

11:03:22 1 MR. HILL: Okay. Does it mean that that jury
11:03:25 2 doesn't start out leaning one way or the other?

11:03:28 3 JUROR BOUZEK: Absolutely.

11:03:29 4 MR. HILL: Doesn't start out pre-disposed?

11:03:32 5 JUROR BOUZEK: That's correct.

11:03:32 6 MR. HILL: All right. Thank you, sir.

11:03:35 7 Let me ask just you to pass the microphone down
11:03:38 8 there to Juror No. 2 next to you.

11:03:41 9 Ms. Jones --

11:03:41 10 JUROR JONES: Yes.

11:03:41 11 MR. HILL: -- I'm going to ask you, what does it
11:03:42 12 mean to you for a jury to be fair to both sides?

11:03:45 13 JUROR JONES: Same thing. I mean, he -- exactly
11:03:46 14 what he was talking about.

11:03:47 15 MR. HILL: Let me ask you this: Does it mean that
11:03:48 16 the jury doesn't make their mind up early based on who the
11:03:53 17 parties are or what they think they know about them coming
11:03:56 18 in?

11:03:57 19 JUROR JONES: Correct.

11:03:58 20 MR. HILL: All right. Does anybody disagree with
11:04:01 21 Ms. Jones? Everybody agree that for a jury to be fair to
11:04:06 22 both sides, it doesn't mean they make their mind up early
11:04:10 23 or come in deciding things based on what they think they
11:04:13 24 know?

11:04:14 25 Let me ask -- we'll start there on the back row

11:04:16 1 since we've got some -- you're there close, Mr. Johnston.

11:04:21 2 Juror No. 9, that's Ms. Manning?

11:04:21 3 JUROR MANNING: Yes.

11:04:24 4 MR. HILL: Ms. Manning, what do you think it means
11:04:26 5 for a jury to be fair to both sides?

11:04:28 6 JUROR MANNING: Well, I think it should be equal
11:04:32 7 to both of them.

11:04:34 8 MR. HILL: Do you think it -- do you think it
11:04:36 9 means that you hear all the evidence before you make up
11:04:39 10 your mind on what the real story is?

11:04:42 11 JUROR MANNING: Well, I have to see what -- what
11:04:47 12 the story about before I could say.

11:04:51 13 MR. HILL: Is there anybody right now -- and let
11:04:53 14 me -- I'll start with you, Ms. Manning. Is there anybody
11:04:55 15 right now, because maybe of what you think of USAA or maybe
11:05:01 16 because of something Mr. Bunt had to say this morning when
11:05:05 17 he was talking to you about USAA and their claims, that you
11:05:08 18 feel like that, in fairness, you ought to tell us, you
11:05:15 19 know, I think I might start out leaning a bit their way?
11:05:19 20 Do you feel that way?

11:05:21 21 JUROR MANNING: No.

11:05:22 22 MR. HILL: No, ma'am?

11:05:22 23 JUROR MANNING: No, sir.

11:05:22 24 MR. HILL: You feel that way?

11:05:25 25 JUROR MANNING: No, sir, no, sir.

11:05:27 1 MR. HILL: We start out equal footing?

11:05:29 2 JUROR MANNING: Yes.

11:05:29 3 MR. HILL: Thank you very much. I appreciate it.

11:05:30 4 Let me ask this: Is there anybody else that has
11:05:33 5 opinions about -- because of the opinions they hold about
11:05:35 6 USAA or the opinions that they hold about Wells Fargo, that
11:05:39 7 you feel like you start out in this case maybe a little
11:05:44 8 predisposed, and you're not the person for this case -- for
11:05:50 9 this case that can be that juror that is a hundred percent
11:05:54 10 fair on both sides? Anybody?

11:05:57 11 Now, look, if -- if you do lean one way or another
11:06:03 12 on something, there's nothing wrong with that. That
11:06:05 13 doesn't mean you don't get to serve on a jury. All it
11:06:08 14 means is that we've got to make full disclosure here so
11:06:12 15 that the parties know where they start, okay?

11:06:14 16 And let me ask first -- I'll go back to Juror
11:06:20 17 No. 1 here, Mr. Bouzek, you had some things to say in the
11:06:22 18 questionnaire about Wells Fargo.

11:06:25 19 JUROR BOUZEK: Yes.

11:06:26 20 MR. HILL: And past experiences you had with the
11:06:29 21 company.

11:06:29 22 JUROR BOUZEK: Correct.

11:06:30 23 MR. HILL: Do you believe those past experiences
11:06:32 24 start you out with a -- where we start out a little bit
11:06:37 25 behind?

11:06:38 1 JUROR BOUZEK: No, I don't think so. It's been
11:06:42 2 years ago, and, you know, if it was closer to that time,
11:06:46 3 I'd say yeah --

11:06:47 4 MR. HILL: Okay.

11:06:47 5 JUROR BOUZEK: -- anyhow.

11:06:49 6 MR. HILL: Okay. Nothing that you think would
11:06:52 7 influence your ability to be that impartial jury where that
11:06:55 8 I as a lawyer for Wells Fargo should have concerns about
11:07:01 9 anything from your past interactions with the company.

11:07:03 10 JUROR BOUZEK: I don't think so.

11:07:04 11 MR. HILL: All right. All right. It certainly
11:07:04 12 didn't have anything to do with patents, did it?

11:07:06 13 JUROR BOUZEK: No, sir.

11:07:06 14 MR. HILL: Thank you very much.

11:07:07 15 Also, by the same token, we had Ms. --

11:07:11 16 Ms. Hilgenfeld over here, yes, ma'am, can I talk to you for
11:07:14 17 just a second? Now, you mentioned your business works a
11:07:18 18 lot for Wells Fargo --

11:07:20 19 JUROR HILGENFELD: Yes, sir.

11:07:20 20 MR. HILL: -- is that right? And you think
11:07:21 21 because of that that you might start out predisposed?

11:07:25 22 JUROR HILGENFELD: I honestly can't tell you. I
11:07:32 23 mean, I don't know for sure. I mean, since it's a patent
11:07:35 24 case, but at the same time, if they were sued --

11:07:46 25 MR. HILL: Uh-huh.

11:07:47 1 JUROR HILGENFELD: -- or if they lost, then, you
11:07:50 2 know, that may have bearings. I don't -- I'm kind of
11:07:54 3 wishy-washy there.

11:07:55 4 MR. HILL: Okay. Let me ask this question: Who
11:07:57 5 in the jury panel thinks the folks at USAA's table ought to
11:08:02 6 be concerned a little bit if Ms. Hilgenfeld was on the
11:08:05 7 jury?

11:08:07 8 Okay. I think we all kind of see that. I mean,
11:08:10 9 she's got a business that -- that gets a lot of work from
11:08:13 10 Wells Fargo, and that doesn't mean she's not fair-minded.
11:08:16 11 It doesn't mean she wouldn't sit and consider the evidence
11:08:19 12 fairly, but it means she would start out because of her
11:08:23 13 experience with Wells Fargo probably in a way that would
11:08:25 14 make them a little uncomfortable, probably in a way that
11:08:28 15 would make people on the street looking at this trial think
11:08:32 16 maybe there was something going on there, maybe they didn't
11:08:34 17 get a fair shake, okay? Everybody see that?

11:08:38 18 Thank you, Ms. Hilgenfeld.

11:08:40 19 JUROR HILGENFELD: Thank you.

11:08:41 20 MR. HILL: Appreciate that.

11:08:41 21 And, folks, the reason I bring that up, is there
11:08:44 22 anybody -- that works both ways. Is there anybody that has
11:08:48 23 a relationship with USAA or opinions about USAA that makes
11:08:52 24 you feel like I might be a little bit in Ms. Hilgenfeld's
11:08:57 25 camp, if -- if Mr. Hill up there knew what I think about

11:09:02 1 USAA, it might look like I start out a little slanted? You
11:09:07 2 know, it doesn't mean you're not fair-minded, it just means
11:09:09 3 it's how you view folks, it's how you view the parties in
11:09:13 4 the case. Anybody?

11:09:14 5 All right. I appreciate that.

11:09:16 6 Now, ladies and gentlemen, before I get too far,
11:09:20 7 let me ask the obvious questions that lawyers have to ask
11:09:23 8 in these things and, that is, do you know anybody here on
11:09:26 9 the other side?

11:09:27 10 So we'll start out, you've got the lawyers in this
11:09:30 11 case for USAA, is a law firm called Irell & Manella, and
11:09:36 12 their lead lawyer in this case is a gentleman named
11:09:40 13 Mr. Jason Sheasby. He's from Los Angeles. And does anyone
11:09:42 14 here have any connection or has ever heard of or know
11:09:45 15 anything about the law firm Irell & Manella? Anybody?

11:09:50 16 All right. And you previously met Mr. Bunt.
11:09:53 17 Mr. Bunt is from Tyler. He is with a firm called Parker
11:09:59 18 Bunt and Ainsworth, and Mr. Bunt and his wife's family, the
11:10:02 19 Parkers, are from the Hallsville area originally. Does
11:10:07 20 anybody here have any connection to Mr. Bunt, heard of his
11:10:10 21 law firm, or you think you know either the Bunts or the
11:10:14 22 Parkers from the Hallsville area? Anybody?

11:10:20 23 All right. Oh, I'm sorry.

11:10:23 24 JUROR RANKIN: I know some of the Parkers that
11:10:25 25 work in the high school.

11:10:25 1 THE COURT: Let's get the microphone and let you
11:10:27 2 stand up, please, sir.

11:10:29 3 MR. HILL: Thank you. That's Mr. Rankin.

11:10:32 4 JUROR RANKIN: Yes, I know a couple of the Parkers
11:10:34 5 that work at the high school, but I was not -- unaware
11:10:36 6 there was any connections.

11:10:38 7 MR. HILL: So you know some Parkers, but you don't
11:10:40 8 know them to be Mr. Bunt's in-laws?

11:10:43 9 JUROR RANKIN: No, sir.

11:10:44 10 MR. HILL: Thank you very much. Anybody else?

11:10:46 11 Now, there's one other person I'd like to mention,
11:10:49 12 Mr. Todd Parish. Mr. Parish is assisting USAA with the
11:10:53 13 jury selection in the case. Is there anybody that knows
11:11:00 14 Mr. Parish?

11:11:01 15 All right. Now, as I mentioned earlier, USAA is
11:11:05 16 the Plaintiff in this case, and according to Wikipedia,
11:11:09 17 USAA is the United Services Automobile Association --
11:11:15 18 that's what that stands for -- in San Antonio. It is a
11:11:19 19 diversified financial services group of companies including
11:11:22 20 a Texas Department of Insurance regulated reciprocal
11:11:27 21 insurance exchange. And it has subsidiaries offering
11:11:30 22 banking, investing, and insurance.

11:11:32 23 Is there anyone here who is a USAA customer --
11:11:38 24 USAA customer? Let me see your hands here. So we've got
11:11:42 25 No. 6, that's Mr. Meade, okay, we've got No. 19, that's

11:11:46 1 Mr. Pickens. Who else do we have out there? No. 22.

11:11:53 2 JUROR NEELEY: My wife is.

11:11:55 3 MR. HILL: Your wife is, okay, and that's

11:11:59 4 Mr. Neeley?

11:12:00 5 JUROR NEELEY: Yes.

11:12:01 6 MR. HILL: All right. Who else, Ms. Black?

11:12:04 7 Anybody I miss? USAA customer or maybe your
11:12:07 8 spouse is?

11:12:08 9 All right. Thank you.

11:12:09 10 Now, those of you who -- one thing you're going to
11:12:19 11 hear, those of you that serve on the panel and also those
11:12:22 12 of you just from everyday life may know, is that USAA,
11:12:27 13 they're an insurance company, but they also have banking
11:12:29 14 services. And that's part of what's at issue in this case.
11:12:32 15 And they limit their services -- their insurance services
11:12:37 16 or their banking services to current or former members of
11:12:40 17 the military and their families, okay. That's what USAA
11:12:43 18 does. That's who they sell to.

11:12:46 19 Does hearing that cause anybody to feel like they
11:12:49 20 thought -- they start off more on the USAA side because
11:12:54 21 they try to service military families? Anybody?

11:12:58 22 Does anybody here recall seeing USAA ads on TV?

11:13:04 23 Let me see hands. How many of you have see them?

11:13:09 24 All right. Does anybody recall anything from
11:13:11 25 those ads?

11:13:12 1 Who do we have -- Mr. Bouzek. Do you -- tell me
11:13:15 2 about that. What -- what do you recall from those ads?

11:13:18 3 JUROR BOUZEK: Just that, that they service prior
11:13:22 4 service members, and that's what sticks in my mind.

11:13:25 5 MR. HILL: Okay.

11:13:26 6 JUROR BOUZEK: So that's what I remember about
11:13:28 7 them, car, house, whatever.

11:13:29 8 MR. HILL: Is there anything about the advertising
11:13:31 9 that you folks have seen that cause you to think you start
11:13:34 10 out having a more favorable view of USAA? Do those ads
11:13:40 11 cause any of you to have just generally more favorable
11:13:45 12 views of USAA? Do they cause any of you to have more
11:13:50 13 negative views of USAA?

11:13:53 14 Okay. Thank you, sir. I appreciate it.

11:13:58 15 Let me ask similarly about Wells Fargo. Okay.
11:14:02 16 Wells Fargo also has television ads. Does anybody recall
11:14:05 17 seeing Wells Fargo ads? Let me see your hands. Is there
11:14:10 18 anything about that advertising that makes anybody lean one
11:14:13 19 way or the other?

11:14:14 20 Now, this case involves two corporations, as we've
11:14:21 21 shown. They're both large. They're both successful. And
11:14:25 22 is there anybody that, because of that, you have feelings
11:14:30 23 about big corporations generally? Some people don't like
11:14:33 24 them. Some people think it's a big corporation, I don't
11:14:39 25 really care for them. Anybody share that feeling, feel

11:14:44 1 that way?

11:14:46 2 Is there anybody who is concerned about big
11:14:51 3 corporations or think they ought to be subject to some sort
11:14:54 4 of government regulation? Anyone?

11:14:58 5 All right. Let me ask -- Mr. Bunt asked those of
11:15:04 6 you that knew each other. I think there were a couple of
11:15:07 7 others he may have missed. Let me see the hands again of
11:15:11 8 jurors that know one another.

11:15:12 9 All right. Back here in the back. We have Mr. --
11:15:14 10 No. 22, that's Mr. Neeley.

11:15:16 11 JUROR NEELEY: Yes, sir.

11:15:17 12 MR. HILL: Mr. Neeley, tell me who you know.

11:15:19 13 JUROR NEELEY: Cooper Terry, me and him used to
11:15:23 14 work together.

11:15:23 15 MR. HILL: Okay. Where did y'all work?

11:15:25 16 JUROR NEELEY: Fastenal.

11:15:26 17 MR. HILL: All right. Are y'all friends today or
11:15:28 18 just former work associates?

11:15:31 19 JUROR NEELEY: Former work associates.

11:15:34 20 MR. HILL: All right. Thank you, sir. Anything
11:15:35 21 about that, Mr. Neeley, that if you and Mr. Terry both
11:15:39 22 ended up on the jury that you think would be hard for you?

11:15:43 23 JUROR NEELEY: No, sir.

11:15:43 24 MR. HILL: If you and he disagreed, would you be
11:15:47 25 able to do that based on the fact that you know each other?

11:15:50 1 JUROR NEELEY: Yes, sir.

11:15:51 2 MR. HILL: All righty. Is there anybody who did
11:15:55 3 know folks on the jury who thinks, you know, if I got in a
11:15:57 4 jury room and me and that other person saw it different,
11:16:02 5 that might be an uncomfortable situation for me because of
11:16:04 6 that past relationship? Was that a concern for anybody?
11:16:07 7 All right.

11:16:07 8 Now, folks, as you heard in the video this
11:16:12 9 morning, this is a patent case, and the patent system is
11:16:15 10 based on a bargain between the government and the inventor.
11:16:20 11 And as the video explained this morning, if you have
11:16:23 12 something that's new and what patent lawyers call novel and
11:16:28 13 if you clearly specify and describe that invention, tell
11:16:31 14 others how to make it in your patent and the Patent Office
11:16:34 15 agrees that it's new and novel and you've done those
11:16:37 16 things, then you can get a government-granted monopoly on
11:16:43 17 that. You can get a patent on it. That's what a patent
11:16:46 18 is. And it's good for about 20 years, and after that it
11:16:49 19 belongs to everybody. The ideas in that patent belong to
11:16:52 20 everybody.

11:16:52 21 Is there anybody who didn't realize before the
11:16:55 22 video today that that's effectively what a patent is, is a
11:16:59 23 government -- government-granted exclusivity, a
11:17:03 24 government-granted monopoly?

11:17:04 25 Was that a surprise to anybody?

11:17:09 1 Now, is there anybody that came to court today
11:17:13 2 with any feelings about the Patent Office or you had an
11:17:16 3 opinion, you thought about it in the past? It crossed your
11:17:20 4 mind and you have an opinion about the Patent Office?

11:17:23 5 For instance, does anybody come here today feeling
11:17:26 6 like the Patent Office generally does a pretty good job of
11:17:30 7 vetting patent applications and deciding whether to issue
11:17:33 8 patents? Anybody come here today thinking that?

11:17:37 9 Let me call out somebody and ask. Let's start on
11:17:40 10 the back row here, No. 12, Mr. Harris, let me ask you that
11:17:51 11 question. Coming into court today, did you have any just
11:17:54 12 preconceived notion of the quality of the work the Patent
11:17:57 13 Office does?

11:17:58 14 JUROR KASSIDY HARRIS: No, I did not.

11:17:59 15 MR. HILL: All right. What about next to you?
11:18:01 16 We'll go to Mr. Richardson.

11:18:04 17 JUROR RICHARDSON: No, I did not.

11:18:06 18 MR. HILL: No -- one way or the other?

11:18:06 19 JUROR RICHARDSON: No, sir.

11:18:06 20 MR. HILL: No --

11:18:06 21 JUROR RICHARDSON: Never had any dealings with
11:18:06 22 patents.

11:18:07 23 MR. HILL: All right. And then here on the end,
11:18:08 24 No. 14, Ms. Pate?

11:18:13 25 JUROR PATE: No, sir, no feelings.

11:18:15 1 MR. HILL: All right. One of the defenses that
11:18:17 2 the jury in this case is going to hear about and will
11:18:19 3 decide is whether USAA's patents are invalid, okay? That's
11:18:25 4 one of the issues that are going to exist in this case.
11:18:27 5 And a finding of invalidity means that you will be
11:18:31 6 canceling the patent USAA claims in this case.

11:18:34 7 Now, those are patents that were issued by the
11:18:38 8 Patent Office, and I'll -- I've done this a number of times
11:18:41 9 over the years. A lot of folks don't feel comfortable with
11:18:43 10 that role, okay? A lot of people think, I'm going to serve
11:18:46 11 on a jury, and I'm going to be asked to cancel a patent
11:18:53 12 that the Patent Office issued, I don't so much know about
11:18:57 13 that.

11:18:57 14 And so what I'm asking is, is there anybody out
11:19:00 15 there that feels like a jury shouldn't be the one asked to
11:19:03 16 invalidate a patent? Anybody feel that way? Anybody feel
11:19:07 17 uncomfortable knowing you're going to sit on a case where
11:19:10 18 depending on what the evidence shows, you may be in a
11:19:13 19 position where you have to invalidate a patent? Does that
11:19:18 20 cause anybody discomfort?

11:19:19 21 Let's ask Mr. -- Mr. Nilsson.

11:19:23 22 JUROR NILSSON: My question -- I actually had a
11:19:24 23 question because what --

11:19:24 24 MR. HILL: Okay.

11:19:25 25 JUROR NILSSON: -- what you're saying is, at the

11:19:26 1 end of the day, so the decision made by the jury will not
11:19:31 2 only could -- it will invalidate a patent and then
11:19:36 3 naturally any money that someone was seeking would be
11:19:40 4 negated, as well?

11:19:42 5 MR. HILL: That's right.

11:19:44 6 JUROR NILSSON: That is what you're -- that's what
11:19:44 7 you're saying?

11:19:44 8 MR. HILL: Yes, sir.

11:19:44 9 JUROR NILSSON: Okay. Just so we're clear.

11:19:45 10 MR. HILL: If the patent is invalid -- if the
11:19:46 11 patent is invalid, then USAA can't use that invalid patent
11:19:49 12 to demand money damages --

11:19:49 13 JUROR NILSSON: Understood.

11:19:51 14 MR. HILL: -- from a company like Wells Fargo.

11:19:52 15 JUROR NILSSON: That makes it clear for all of us.

11:19:55 16 MR. HILL: All right. Is there anybody who thinks
11:19:58 17 to themselves -- and, Mr. Nilsson, I'll start with you
11:20:01 18 since we were talking about it -- who thinks, you know, if
11:20:03 19 the -- if the evidence supported it, I might still have a
11:20:09 20 little hesitancy about invalidating a patent?

11:20:12 21 JUROR NILSSON: I -- I'm not educated enough to
11:20:15 22 make that decision yet. I need to have some more
11:20:18 23 information because I'm just not -- we're not there yet for
11:20:21 24 me to be able to answer the question.

11:20:25 25 MR. HILL: Yes, sir.

11:20:25 1 JUROR NILSSON: I don't have all the facts.

11:20:26 2 MR. HILL: A lot of people think -- you know, they
11:20:28 3 think, well, you know, that may be the law, but I couldn't
11:20:29 4 take away a patent issued by the Patent Office. Do you
11:20:32 5 feel that way?

11:20:33 6 JUROR NILSSON: I'm -- I'm just not ready to
11:20:35 7 make -- I just -- I can't answer it honestly because I
11:20:37 8 don't know. I'm going to want to know more of the rules
11:20:41 9 and how all that stuff works.

11:20:42 10 MR. HILL: Yes, sir. And -- and once you learn
11:20:43 11 those rules and hear those rules, if the Judge tells you
11:20:47 12 that those are the rules and that's what you'll be asked to
11:20:49 13 do, do you believe you'd be able to consider the evidence
11:20:49 14 and decide that question and invalidate a patent if you
11:20:53 15 needed to?

11:20:53 16 JUROR NILSSON: If it's wrong, it's wrong; if it's
11:20:55 17 right, it's right.

11:20:56 18 MR. HILL: All right. Let me go down the row
11:21:00 19 here. Mr. -- Mr. Meade next to you.

11:21:02 20 Mr. Meade, how do you feel about that?

11:21:02 21 JUROR MEADE: I'm kind of one of the ones that --
11:21:05 22 you know, it's not going to sway me either way. If it's --
11:21:07 23 the findings go that it needs to be invalidated or
11:21:11 24 validated, either way. In some ways, I kind of look at --
11:21:13 25 maybe it's a Patent Office issue that shouldn't be a jury.

11:21:16 1 MR. HILL: Uh-huh.

11:21:17 2 JUROR MEADE: But that's kind of dealing with
11:21:19 3 things at work. Usually, if it's your fight, then deal
11:21:23 4 with the people that should be dealing with it, not
11:21:26 5 necessarily anybody else. But that's -- that's kind of
11:21:29 6 just a -- the way my business goes. That's the way it's
11:21:31 7 kind of dealt with. If it's your problem, you deal with it
11:21:36 8 with the people that it's circled around.

11:21:36 9 MR. HILL: Well, if the -- if the Judge instructs
11:21:38 10 you on the law in this case and says that's an issue the
11:21:42 11 jury has to decide, that's the jury's role --

11:21:42 12 JUROR MEADE: Uh-huh.

11:21:43 13 MR. HILL: -- would you be able to perform that
11:21:45 14 role?

11:21:45 15 JUROR MEADE: Yes, sir.

11:21:47 16 MR. HILL: All right. Is there anybody that would
11:21:48 17 have pause, who would think, Mr. Hill, that may be the law,
11:21:51 18 but I -- even if the evidence is there, I don't know if I
11:21:55 19 could invalidate a patent.

11:21:58 20 Let me start on the back row, folks I haven't
11:22:01 21 talked to here -- No. 10 here, if I can. That's
11:22:05 22 Ms. Walker.

11:22:06 23 Ms. Walker, how do you feel about that?

11:22:08 24 JUROR WALKER: I feel that if evidence presented
11:22:10 25 the fact that it was not valid, then I could rule it not

11:22:15 1 valid.

11:22:16 2 MR. HILL: Okay. And then No. 9 right next to you
11:22:19 3 there. Again, Ms. Manning?

11:22:19 4 JUROR MANNING: Well, I feels the same way she
11:22:23 5 just said.

11:22:24 6 MR. HILL: Okay. And then No. 8 beside you there,
11:22:28 7 Ms. McDonald?

11:22:29 8 JUROR MCDONALD: I feel the same way.

11:22:32 9 MR. HILL: All right.

11:22:32 10 JUROR MCDONALD: Whatever the evidence.

11:22:33 11 MR. HILL: Is there anybody that disagrees with
11:22:35 12 them?

11:22:39 13 Now, let me see the hands of everybody that gets a
11:22:42 14 property tax bill every year from the county appraiser.
11:22:45 15 Doesn't bring a happy face when you raise that hand.

11:22:48 16 Now, let me -- let me just start -- let me see
11:22:51 17 those hands again. Let me see who all we've got. All
11:22:55 18 right. Let's -- let's start here on the -- No. 15, that's
11:22:59 19 Ms. -- Ms. Shepard?

11:23:00 20 Ms. Shepard, let me ask you about that. Now, you
11:23:05 21 get that property tax appraisal every year, right? And the
11:23:08 22 appraisal district has trained professional appraisers,
11:23:12 23 right?

11:23:12 24 JUROR SHEPARD: Right.

11:23:14 25 MR. HILL: And it's their work for them to come up

11:23:16 1 with that new property value each year. Are those
11:23:18 2 appraisals always right?

11:23:20 3 JUROR SHEPARD: In my mind, no.

11:23:22 4 MR. HILL: Okay. Why not?

11:23:24 5 JUROR SHEPARD: I just feel like it reflects an
11:23:28 6 amount that not always -- you know, we haven't always done
11:23:29 7 improvements to our property and this and that, I don't
11:23:32 8 feel like. But I do pay my taxes so...

11:23:33 9 MR. HILL: Yes, ma'am. We all have to --
11:23:37 10 begrudgingly or not, we have to.

11:23:41 11 JUROR SHEPARD: Right.

11:23:41 12 MR. HILL: Let me ask, is there anybody who
11:23:43 13 disagrees with Ms. Shepard and thinks, no, you know, the
11:23:45 14 tax office, they get those appraisals right? Okay.

11:23:50 15 They make -- mistakes can be made, correct?

11:23:55 16 JUROR SHEPARD: Correct.

11:23:56 17 MR. HILL: Have you ever had to challenge an
11:23:59 18 appraisal?

11:24:02 19 JUROR SHEPARD: Not that I recall, no.

11:24:03 20 MR. HILL: Has anybody here ever challenged their
11:24:06 21 tax appraisal?

11:24:07 22 All right. Let's see, No. 5 here, Ms. Fisher.

11:24:07 23 Thank you, Ms. Shepard.

11:24:13 24 Ms. Fisher, you've challenged a tax appraisal?

11:24:13 25 JUROR FISHER: Yes, sir.

11:24:14 1 MR. HILL: All right. Did you know that if you
11:24:15 2 take that far enough, you can even get a trial in court
11:24:19 3 over that property value?

11:24:20 4 JUROR FISHER: I didn't. I was able to settle it.

11:24:22 5 MR. HILL: All right. Very good. But why do we
11:24:23 6 have that process, Ms. Fisher?

11:24:26 7 JUROR FISHER: Well, to make sure that everything
11:24:28 8 is equal and -- and balanced.

11:24:32 9 MR. HILL: All right. So it's a check and a
11:24:34 10 balance on the -- on the appraisal office because sometimes
11:24:38 11 when things are done the first time, government agencies
11:24:41 12 don't all get it right, do they?

11:24:42 13 JUROR FISHER: That's correct.

11:24:43 14 MR. HILL: Anybody think government agencies are
11:24:47 15 infallible?

11:24:49 16 Okay. Now, the Patent Office, Ms. Fisher, let
11:24:51 17 me -- let me just ask you a question about this. The
11:24:53 18 Patent Office is a federal government agency, like the IRS,
11:24:57 19 like the VA, or other federal government agencies. Have
11:25:02 20 you ever had any dealings with a federal government agency?

11:25:03 21 JUROR FISHER: I've worked for the federal
11:25:05 22 government.

11:25:05 23 MR. HILL: Okay. Who did you work for?

11:25:06 24 JUROR FISHER: It was an ammunition plant.

11:25:09 25 MR. HILL: Was it Red River up in --

11:25:11 1 JUROR FISHER: No, it was Thiokol -- or Longhorn
11:25:15 2 Army Ammunition Plant.

11:25:17 3 MR. HILL: I got you. I got you.

11:25:18 4 You mentioned also earlier, Ms. Fisher, while I've
11:25:21 5 got you there, that your stepson had gotten a patent on
11:25:24 6 something?

11:25:24 7 JUROR FISHER: Correct.

11:25:25 8 MR. HILL: All right. Is that going to influence
11:25:26 9 you, you think, in hearing a case where you may be asked to
11:25:30 10 invalidate a patent?

11:25:31 11 JUROR FISHER: It won't, because I don't know
11:25:32 12 about them.

11:25:32 13 MR. HILL: Okay.

11:25:32 14 THE COURT: You have five minutes remaining,
11:25:35 15 counsel.

11:25:35 16 MR. HILL: Thank you, Your Honor.

11:25:35 17 Well, folks, what you're going to see today, those
11:25:50 18 of you that hear this case, is that the Patent Office also
11:25:53 19 has a check and a balance. Our patent laws set up a check
11:25:57 20 and a balance for the Patent Office. That check and
11:25:59 21 balance is actually this. It's you. It's a jury trial.

11:26:03 22 And what we're going to be presenting to the jury
11:26:07 23 is asking that that check-and-balance process be used to
11:26:12 24 look at the work that the Patent Office has done in this
11:26:15 25 case.

11:26:15 1 So I want to ask one last time before I move on,
11:26:23 2 anybody going to have a problem, going to have an issue,
11:26:23 3 going to have reservations if they're on a jury where
11:26:27 4 they're asked to exercise as to be that check valve that
11:26:29 5 exists?

11:26:31 6 Thank you, folks.

11:26:32 7 Now, one other thing you heard in this case is the
11:26:36 8 presumption of validity. You heard mentioned earlier,
11:26:39 9 Judge -- and you heard it in the video earlier about there
11:26:45 10 is a presumption of validity about a patent. And that's
11:26:47 11 true.

11:26:48 12 But let me talk to you about that. Let me see the
11:26:51 13 hands of those of you who have served on a criminal case
11:26:51 14 before. All right.

11:26:56 15 No. 4 here, Mr. Johns. Now, there a presumption
11:26:58 16 in a criminal case, too, right?

11:27:00 17 JUROR JOHNS: Yes, sir.

11:27:00 18 MR. HILL: Presumption of innocence. What did you
11:27:04 19 find in your case?

11:27:05 20 JUROR JOHNS: My presumption of it?

11:27:07 21 MR. HILL: Well, did y'all find the person guilty
11:27:09 22 or innocent?

11:27:11 23 JUROR JOHNS: They were guilty.

11:27:12 24 MR. HILL: All right. So that presumption didn't
11:27:14 25 preclude you from reaching a verdict, did it?

11:27:17 1 JUROR JOHNS: No, sir.

11:27:17 2 MR. HILL: Why not?

11:27:18 3 JUROR JOHNS: Because it was the right -- it was
11:27:19 4 right. I mean, evidence was there beyond a reasonable
11:27:20 5 doubt.

11:27:20 6 MR. HILL: It was because the evidence was there,
11:27:21 7 right?

11:27:21 8 JUROR JOHNS: Yes, sir.

11:27:22 9 MR. HILL: So if there's evidence, the presumption
11:27:25 10 goes away and you follow what the evidence requires; is
11:27:29 11 that right?

11:27:29 12 JUROR JOHNS: Yes, sir.

11:27:29 13 THE COURT: Mr. Johns, hold that microphone
11:27:32 14 closer.

11:27:32 15 JUROR JOHNS: Yes, sir.

11:27:34 16 MR. HILL: Thank you, sir. I appreciate it.

11:27:35 17 THE COURT: Hold it closer next time.

11:27:38 18 MR. HILL: Now, one of the things you're going to
11:27:40 19 hear addressed in this case is damages. As you heard
11:27:44 20 earlier, USAA is going to ask for over a hundred million
11:27:47 21 dollars in damages.

11:27:48 22 And I have heard jurors say to me before after a
11:27:53 23 case, well, the Defendant in the case talked about why the
11:27:56 24 damages were wrong and why the damages should be lower, so
11:28:00 25 they obviously thought they owed something.

11:28:05 1 Anybody think about it that way? Think that if a
11:28:10 2 Defendant mentions damages, that they must think they owe
11:28:13 3 something?

11:28:14 4 No?

11:28:18 5 As you heard the Judge describe earlier, my job as
11:28:22 6 a lawyer, I'm legally required to rebut the case the
11:28:25 7 Plaintiff puts on, and so I can't just say, huh-uh. I have
11:28:28 8 to put on evidence to rebut it. And so part of our role
11:28:32 9 will be to put on damages evidence also. And my question
11:28:35 10 is, is anybody on the jury going to look at our
11:28:39 11 presentation of damages evidence and think, oh, they're
11:28:42 12 admitting something?

11:28:43 13 Mr. Nilsson, would you feel that way?

11:28:45 14 JUROR NILSSON: Not necessarily, no -- I'm sorry.

11:28:48 15 MR. HILL: Do you understand that that's our task
11:28:50 16 as the defense side of a case is to put on the contrary
11:28:52 17 view?

11:28:53 18 JUROR NILSSON: As much as it is their side of the
11:28:55 19 case to present their side.

11:28:57 20 MR. HILL: Yes, sir. Thank you, sir.

11:28:58 21 Now, ladies and gentlemen, I'll point out to you
11:29:06 22 what's gone on here this morning, I had to go second,
11:29:07 23 that's going to go on through the whole case. They get to
11:29:09 24 go first as the Plaintiff. We have to go second. Have any
11:29:12 25 of you that have small children ever had one come tattling

11:29:16 1 to you about what the other was doing? Do you take what
11:29:19 2 the first one tells you as the gospel? No? Does it always
11:29:26 3 turn out that the story you get from the first one is
11:29:29 4 really what happened? Anybody think that?

11:29:33 5 Can I get a commitment from all of you that you
11:29:36 6 will wait and hear both sides of the story, wait and hear
11:29:41 7 from us before you make your mind up? Because it is our
11:29:45 8 belief that when you hear the whole story, you'll have a
11:29:48 9 different view of it.

11:29:49 10 And I want to just ask down the row here,
11:29:52 11 Mr. Bouzek, starting with you, can I get that commitment
11:29:55 12 from you.

11:29:55 13 JUROR BOUZEK: Uh-huh.

11:29:58 14 MR. HILL: Can I get that commitment from
11:30:00 15 everybody on the first row? Can I get that commitment from
11:30:04 16 everybody on the back row? What about over here, can I get
11:30:06 17 that commitment from everybody over on this side of the
11:30:10 18 room? Is there anybody that tells me, I don't know if I
11:30:13 19 can give you that commitment?

11:30:15 20 Now, ladies and gentlemen, I will end much like
11:30:18 21 Mr. Bunt did. Lawyers can't --

11:30:22 22 THE COURT: Your time is expired.

11:30:23 23 MR. HILL: Well, I will end quicker than Mr. Bunt
11:30:26 24 did.

11:30:27 25 Thank you, Your Honor, I appreciate the time.

11:30:29 1 THE COURT: Thank you.

11:30:30 2 All right. Counsel, approach the bench, please.

11:30:46 3 (Bench conference.)

11:30:50 4 THE COURT: Does the Plaintiff have any challenges
11:30:55 5 for cause, Mr. Bunt?

11:30:56 6 MR. BUNT: Yes, Your Honor, No. 16.

11:31:02 7 THE COURT: All right. Any others?

11:31:06 8 MR. BUNT: No, Your Honor.

11:31:08 9 THE COURT: Okay. Mr. Hill, does Defendant have
11:31:10 10 any challenges for cause?

11:31:12 11 MR. HILL: Yes, Your Honor, we have four: No. 6,
11:31:16 12 No. 19, No. 22, and No. 26. And let me explain my issue
11:31:26 13 there, Your Honor. So these individuals are all members of
11:31:30 14 USAA. They or their spouse are a member of USAA, which
11:31:35 15 means that they have a direct financial interest in the
11:31:37 16 outcome of the litigation.

11:31:39 17 USAA, because of the nature of its ownership,
11:31:42 18 returns dividends based on financial performance of the
11:31:45 19 company to its members. It is akin to stock ownership. It
11:31:48 20 is a legal disqualification from jury service, Your Honor.
11:31:51 21 I have cases and case cites I can give you on the matter.
11:31:56 22 And I don't have them on hand here, but I've got them at
11:31:59 23 the table, Your Honor. But a USAA member is akin to stock
11:32:04 24 ownership.

11:32:07 25 MR. SHEASBY: Your Honor, I can confirm that his

11:32:08 1 case law citations are correct.

11:32:11 2 THE COURT: So you're agreeing, Mr. Sheasby, that
11:32:13 3 if these four venire members identified by Mr. Bunt are, in
11:32:18 4 fact, members of USAA, that they should be disqualified?

11:32:22 5 MR. SHEASBY: Yes, and Mr. Hill is correct, Your
11:32:25 6 Honor.

11:32:25 7 MR. HILL: And we have no -- no opposition to
11:32:32 8 No. 16 to -- cause challenge by the Plaintiff, Your Honor.

11:32:35 9 THE COURT: Is there any factual dispute among the
11:32:37 10 parties as to the four venire members identified by
11:32:41 11 Mr. Hill as being actual members of USAA? Do I need to
11:32:44 12 call them up here and verify that?

11:32:47 13 MR. HILL: I don't know that we do, Your Honor.
11:32:48 14 We've heard from them both in open venire, and we've seen
11:32:53 15 the answers in the questionnaires. They indicated these
11:32:59 16 answers in the questionnaires.

11:33:05 17 MR. SHEASBY: I think we should ask 22 and 26
11:33:08 18 quickly, Your Honor.

11:33:08 19 THE COURT: All right. Well, with no opposition
11:33:13 20 from the Defendants to Plaintiff's challenge for cause as
11:33:18 21 to Ms. Hilgenfeld, No. 16, I'm going to excuse No. 16.

11:33:22 22 If there's any doubt, I'll bring up 22 and 26 and
11:33:28 23 confirm their membership in USAA.

11:33:30 24 MR. SHEASBY: We would request -- we would
11:33:34 25 appreciate that, Your Honor.

11:33:35 1 THE COURT: There are obviously no scheduling
11:33:37 2 issues with any members of the panel. Are there any other
11:33:40 3 members of the panel that I should hold back, other than 22
11:33:43 4 and 26, to question here about their membership in USAA?

11:33:47 5 MR. SHEASBY: Nothing from Plaintiffs, Your Honor.

11:33:49 6 THE COURT: Defendant?

11:33:50 7 MR. HILL: No, sir -- no, sir, Your Honor.

11:33:51 8 THE COURT: All right. Take a seat, counsel.

11:33:53 9 MR. SHEASBY: Thank you, Your Honor.

11:33:54 10 (Bench conference concluded.)

11:33:58 11 THE COURT: Ladies and gentlemen, I'm about to
11:34:00 12 excuse you for a recess, except there are two of you I'm
11:34:04 13 going to ask to stay behind and let me talk with you here
11:34:07 14 briefly at the bench, but everyone else I'm going to excuse
11:34:10 15 for recess.

11:34:11 16 Those of you who are part of that larger group
11:34:14 17 that's going to be excused for recess, if you will exit
11:34:17 18 through the double doors in the back and stay inside the
11:34:20 19 building. Don't leave the building. Also, as you go on to
11:34:25 20 the recess, if you make a left going out of those double
11:34:28 21 doors, you'll find two important things, the restrooms and
11:34:34 22 the water fountains.

11:34:34 23 It's also important, ladies and gentlemen, that
11:34:36 24 those of you that are on recess, that you not talk about
11:34:39 25 anything that's happened in the courtroom today. Talk

11:34:41 1 about the weather, talk about what's left of the football
11:34:45 2 season, talk about anything you'd like to, but don't
11:34:48 3 discuss anything that's happened in here this morning.

11:34:50 4 Let me remind every one of you, you have not heard
11:34:53 5 any evidence in this case at all at this point. So don't
11:34:58 6 discuss anything that's happened in the courtroom this
11:34:59 7 morning.

11:35:00 8 I'm going to ask everyone to recess in just a
11:35:07 9 minute except Panel Member No. 22, Mr. Neeley, and 26,
11:35:14 10 Ms. Black.

11:35:15 11 Everyone else, if you will exit at this time, if
11:35:19 12 those two will just remain in their seats, all but 22
11:35:24 13 and -- just leave your cards in your chairs. All about 22
11:35:28 14 and 26 are excused for recess at this time. If you'll lead
11:35:32 15 the way, Mr. Nilsson.

11:35:57 16 (Venire panel out.)

11:36:03 17 THE COURT: Be seated, please.

11:36:18 18 Counsel, approach the bench.

11:36:34 19 And, Mr. Neeley, would you please come up and join
11:36:39 20 us, please, sir?

11:36:41 21 JUROR NEELEY: Yes, sir.

11:36:50 22 (Bench conference.)

11:36:52 23 JUROR NEELEY: Yes, sir.

11:36:52 24 THE COURT: Good morning, Mr. Neeley.

11:36:54 25 JUROR NEELEY: Good morning, how are you?

11:36:56 1 THE COURT: One quick question. You are or are
11:36:59 2 not a member of USAA?

11:37:01 3 JUROR NEELEY: My wife is. I'm not.

11:37:02 4 THE COURT: Okay.

11:37:03 5 JUROR NEELEY: We used to have insurance through
11:37:05 6 them.

11:37:05 7 THE COURT: How -- what -- what -- what kind of
11:37:07 8 insurance does your wife have through USAA?

11:37:09 9 JUROR NEELEY: She has a bank account now. We
11:37:11 10 used to have our homeowner's insurance and all that through
11:37:14 11 them.

11:37:15 12 THE COURT: Yes, sir.

11:37:16 13 JUROR NEELEY: And we -- we switched insurance
11:37:17 14 because the insurance rates, but we kept -- she kept the
11:37:21 15 bank account.

11:37:21 16 THE COURT: So you don't have any insurance with
11:37:26 17 them at this time?

11:37:27 18 JUROR NEELEY: No, sir.

11:37:27 19 THE COURT: Do you have a bank account?

11:37:27 20 JUROR NEELEY: Yes.

11:37:28 21 THE COURT: Are you on that bank account?

11:37:30 22 JUROR NEELEY: I don't think so. I don't know.
11:37:31 23 She handles all that stuff. I'm just the money maker.

11:37:37 24 THE COURT: Okay. All right.

11:37:38 25 Mr. Hill, do you have any questions of Mr. Neeley?

11:37:41 1 MR. HILL: Mr. Neeley, on the insurance policy,
11:37:43 2 those were your -- your home and your property y'all
11:37:46 3 jointly own?

11:37:47 4 JUROR NEELEY: Yes, sir.

11:37:48 5 MR. HILL: Did you have any other insurance with
11:37:50 6 them?

11:37:50 7 JUROR NEELEY: No, sir.

11:37:51 8 MR. HILL: Car insurance?

11:37:52 9 JUROR NEELEY: We had car insurance, I believe --
11:37:55 10 car insurance, our side-by-side was insured with them, our
11:38:00 11 house was insured with them, but we switched to Hochheim.

11:38:07 12 MR. HILL: Okay. And the bank account you still
11:38:10 13 have --

11:38:11 14 JUROR NEELEY: Yes, sir.

11:38:12 15 MR. HILL: And you know that the USAA membership
11:38:17 16 extends to both the spouse -- to the military member, the
11:38:18 17 former military member, and to their spouse?

11:38:22 18 JUROR NEELEY: Correct.

11:38:22 19 MR. HILL: And so you participated in those
11:38:24 20 policies, as well?

11:38:25 21 JUROR NEELEY: Well, yes, I guess -- because my
11:38:26 22 wife got it through her dad because he was a Marine, and he
11:38:31 23 had USAA.

11:38:31 24 THE COURT: How long has it been since you had any
11:38:35 25 insurance with USAA, more than a year or two?

11:38:39 1 JUROR NEELEY: Year.

11:38:41 2 MR. BUNT: Do you know if you were seeking
11:38:44 3 dividends from USAA?

11:38:46 4 JUROR NEELEY: If I do, I don't know about it.

11:38:48 5 MR. BUNT: Thank you, sir.

11:38:49 6 THE COURT: If I were to call USAA in San Antonio
11:38:57 7 and say, is Mr. Chad Neeley a member of USAA, do you know
11:39:02 8 what they'd tell me?

11:39:04 9 JUROR NEELEY: I honestly wouldn't know what
11:39:06 10 they'd tell you.

11:39:07 11 THE COURT: Okay. All right. Mr. Neeley, anybody
11:39:09 12 else got any other questions?

11:39:11 13 MR. HILL: No, sir.

11:39:11 14 MR. BUNT: No, sir.

11:39:13 15 THE COURT: Mr. Neeley, I'm going to let you join
11:39:15 16 the rest of the members outside. Just don't discuss
11:39:18 17 anything we've talked about in here.

11:39:20 18 JUROR NEELEY: Okay. Thank you.

11:39:20 19 (Juror exits courtroom.)

11:39:25 20 (Bench conference continued.)

11:39:25 21 MR. SHEASBY: Your Honor, he actually does not
11:39:27 22 sound like a member.

11:39:28 23 THE COURT: Let me ask this, counsel, and I'll ask
11:39:30 24 this specifically to Mr. Hill: If the participation by
11:39:34 25 someone like Mr. Neeley or his wife is unrelated to their

11:39:39 1 insurance where they make a profit and share dividends with
11:39:44 2 members but it's only related to their banking function, is
11:39:49 3 it your position that they would potentially have a
11:39:53 4 pecuniary benefit --

11:39:54 5 MR. HILL: Yes, Your Honor.

11:39:55 6 THE COURT: -- only through the banking?

11:39:58 7 MR. HILL: Yes, Your Honor, it would be.

11:39:59 8 The membership interest and the way it works once they have
11:40:02 9 the membership interest and the actual dividend payment, it
11:40:05 10 can also extend to banking customers. And so --

11:40:07 11 THE COURT: So they participate in any benefit no
11:40:09 12 matter what their level of actual coverage or interaction
11:40:12 13 with USAA is, as long as they're designated as a member?

11:40:16 14 MR. HILL: I don't know that I can say it that
11:40:18 15 broadly, Your Honor, but I do know that since her
11:40:21 16 membership level was such that she bought insurance and
11:40:25 17 banking, the discovery we've taken in the case and the
11:40:28 18 research we've done indicates to us that they still would
11:40:31 19 have a continuing pecuniary interest and still would be --
11:40:35 20 and there would still be a legal basis for a challenge for
11:40:36 21 cause.

11:40:37 22 The fact that it's him -- or the wife and not him
11:40:40 23 doesn't, under our view of the case law, change that
11:40:43 24 either, Your Honor, because it's still a familial direct
11:40:45 25 benefit.

11:40:46 1 THE COURT: I understand. Let me get Ms. Black up
11:40:48 2 here.

11:40:48 3 (Open court.)

11:40:48 4 THE COURT: Ms. Black, would you join us, please?

11:41:09 5 (Bench conference continued.)

11:41:09 6 THE COURT: Good morning.

11:41:10 7 JUROR BLACK: Good morning.

11:41:11 8 THE COURT: These are our microphones. We're just
11:41:12 9 going to talk quietly. I just really have one question.
11:41:13 10 Are you a member of USAA?

11:41:14 11 JUROR BLACK: Yes.

11:41:15 12 THE COURT: Okay. That's all I need to know.

11:41:17 13 JUROR BLACK: Okay.

11:41:17 14 THE COURT: Can you join of the rest of the group
11:41:20 15 outside. Just don't discuss what we talked about in here.

11:41:23 16 JUROR BLACK: Thank you.

11:41:23 17 (Juror exits courtroom.)

11:41:24 18 (Bench conference continued.)

11:41:24 19 THE COURT: All right. That leaves us unresolved
11:41:31 20 strictly Mr. Neeley.

11:41:33 21 Counsel, I can take -- I can take briefing from
11:41:37 22 both sides or I can excuse Mr. Neeley. He's at No. 22.
11:41:42 23 Let's see if we're going to reach him under any
11:41:46 24 circumstance.

11:41:49 25 No. 6 will go. No. 16 will go. And No. 19 will

11:41:52 1 go.

11:41:52 2 MR. SHEASBY: Your Honor, I'm going to make this
11:41:53 3 easy. I don't want to --

11:41:55 4 THE COURT: I don't think we're going to reach him
11:41:58 5 anyway.

11:41:58 6 MR. SHEASBY: Okay. So, yeah.

11:41:59 7 THE COURT: All right. Well, I'm going to -- just
11:42:03 8 for clarity in the record, counsel, I'm going to excuse
11:42:06 9 Ms. Hilgenfeld for cause. I'm excusing Mr. Meade for
11:42:13 10 cause. I'm going to excuse Mr. Pickens for cause, No. 19.
11:42:17 11 And Ms. Black, No. 26, for cause.

11:42:23 12 It does not appear -- with seating eight jurors
11:42:26 13 and each side having four strikes, it looks like we're
11:42:35 14 going to strike through No. -- is it 20?

11:42:40 15 MR. HILL: I think it's 18, Judge.

11:42:41 16 THE COURT: 18? It's one side or the other of 19.

11:42:43 17 MR. HILL: 16 -- 16 to burn, and then we got two
11:42:45 18 within the zone, that would be -- that's 18 total. I
11:42:49 19 believe 18 would be the end of the strike zone.

11:42:52 20 MR. BUNT: Your Honor, just so I'm clear, is it
11:42:55 21 Jurors No. 6 and No. 16 who are out?

11:42:59 22 THE COURT: No. 16 is out, and No. 6 is excused,
11:43:03 23 yes.

11:43:03 24 MR. SHEASBY: And 19.

11:43:04 25 THE COURT: And 19 and 26, but striking from the

11:43:07 1 beginning of the panel, I don't think -- I think Mr. Hill
11:43:11 2 is correct, we should strike -- you should strike through
11:43:15 3 No. 18. So it's irrelevant whether Mr. Neeley is going to
11:43:20 4 be struck or not because he's never going to be reached.

11:43:23 5 MR. SHEASBY: Yes, understood.

11:43:24 6 THE COURT: So I'll --

11:43:30 7 MR. SHEASBY: So I didn't need to be that generous
11:43:33 8 that quick.

11:43:34 9 THE COURT: I don't -- I don't think I need a -- I
11:43:37 10 don't think I need to rule on whether Mr. Neeley is going
11:43:40 11 to be struck for cause or not because he's never going to
11:43:42 12 be reached.

11:43:43 13 MR. SHEASBY: I agree, Your Honor.

11:43:43 14 MR. HILL: I agree, Your Honor, unless he -- we
11:43:45 15 will maintain our challenge, but if some act of God happens
11:43:45 16 and we see he's going to be reached, we want our challenge
11:43:51 17 for the record.

11:43:51 18 THE COURT: If he's going to be -- if he's going
11:43:52 19 to be reached, then I'll re-raise the issue with counsel
11:43:57 20 outside of the jury's presence before the jury is seated.

11:44:00 21 MR. HILL: Thank you, sir.

11:44:01 22 MR. SHEASBY: Thank you, Your Honor.

11:44:02 23 THE COURT: All right. Counsel, it's about 17
11:44:04 24 minutes until noon. Why don't you have your jury lists
11:44:08 25 struck and back to Ms. Lockhart by noon, okay?

11:44:13 1 MR. SHEASBY: Thank you, Your Honor.

11:44:13 2 MR. HILL: Thank you, Your Honor.

11:44:14 3 MR. BUNT: May we use -- one of us use the jury
11:44:16 4 room, and we've already asked Judge Payne and he said we
11:44:19 5 could use his jury room.

11:44:22 6 THE COURT: I know of no reason why you can't.

11:44:24 7 MR. BUNT: Thank you, Judge.

11:44:24 8 MR. MELSHEIMER: Thank you, Judge.

11:44:27 9 (Bench conference concluded.)

11:44:27 10 THE COURT: All right. While counsel exercise
11:44:29 11 their peremptory challenges, the Court will stand in
11:44:33 12 recess.

11:44:34 13 COURT SECURITY OFFICER: All rise.

11:44:35 14 (Recess.)

12:13:36 15 (Venire panel in.)

12:13:36 16 COURT SECURITY OFFICER: All rise.

12:13:38 17 THE COURT: Be seated, please.

12:13:49 18 All right. Ladies and gentlemen, if you will
12:13:51 19 listen carefully as your name is called, if you'll come
12:13:54 20 forward and take your seat in the jury box.

12:13:57 21 Let me give you a little bit of instruction before
12:13:59 22 we do that, however. We're going to seat eight individuals
12:14:05 23 as the jury in this case. We have a lot more than eight
12:14:09 24 seats in the jury box.

12:14:10 25 So, consequently, I'm going to ask that the first

12:14:15 1 four people whose names are called come forward and place
12:14:19 2 themselves on the front row and the second four people,
12:14:22 3 five, six, seven, and eight, when your name is called, come
12:14:27 4 forward and go to the second row in the jury box.

12:14:29 5 I'm going to ask the first person who's called
12:14:32 6 when you enter the front row of the jury box, to walk down
12:14:36 7 and stand in front of the third chair from the end. Leave
12:14:39 8 two vacant chairs past you. That will put those four in
12:14:43 9 the middle of the front row.

12:14:45 10 And when Jurors 5, 6, 7, and 8 come to the second
12:14:50 11 row of the jury box, if you will just line up behind your
12:14:55 12 counterpart on the front row, that will put our eight
12:14:57 13 jurors in the center of the jury box, four on the front row
12:15:01 14 and four on the second row. And if all of you will stand
12:15:04 15 until everyone is in the jury box and I instruct you
12:15:07 16 further, that would be the Court's preference.

12:15:09 17 So with that, I'm going to ask our courtroom
12:15:11 18 deputy, Ms. Lockhart, to call the eight members of our
12:15:18 19 jury.

12:15:19 20 COURTROOM DEPUTY: Cheryl Jones, Gayla Harris,
12:15:30 21 Travis Johns, Karen McDonald, Rose Manning, Lara Pate,
12:15:52 22 Christie Shepard, and Tracey Brown.

12:15:57 23 THE COURT: Thank you. Please have a seat.

12:16:18 24 Those of you that were not selected to serve on
12:16:23 25 this jury, I'm about to excuse you at this time, but before

12:16:26 1 I do, I want to mention a couple of things.

12:16:28 2 First of all, if you need any documentation for an
12:16:31 3 employer about where you've been this morning, any
12:16:34 4 questions you have, see Ms. Clendening and the staff in the
12:16:37 5 clerk's office out front. They will assist you in anything
12:16:40 6 that you need. They're going to want to recover those very
12:16:44 7 valuable laminated numbers that you're wearing and those
12:16:48 8 juror pins. All of that will be picked up by the clerk's
12:16:53 9 office. So see them on the way out, if you will.

12:16:57 10 If you have any questions or need any -- anything
12:16:58 11 about where you've been this morning, they'll be glad to
12:16:58 12 help you with that.

12:17:01 13 Also, ladies and gentlemen, the Court recognizes
12:17:04 14 full well that every one of you, even though you weren't
12:17:07 15 selected to serve on this jury, every one of you had other
12:17:10 16 places to be today, you had other things to do that were
12:17:13 17 important in your respective lives, and you set that aside,
12:17:17 18 and you sacrificed those personal matters to be here and
12:17:22 19 present yourself for service on this jury.

12:17:24 20 And even though you weren't selected, ladies and
12:17:26 21 gentlemen, you have done very real and important public
12:17:29 22 service by being here. You have answered the call to jury
12:17:33 23 duty. Even though you weren't selected, you've done what
12:17:36 24 every good citizen should do.

12:17:38 25 And, quite honestly, without ordinary citizens

12:17:40 1 such as yourselves coming forward and summonsed and being
12:17:45 2 present for this process that we went through this morning,
12:17:46 3 the Court could not function as we're required to under the
12:17:49 4 Constitution. You've done very real, important public
12:17:55 5 service by being here, and the Court thanks you for that.

12:17:57 6 The Court recognizes it, and I'm confident that
12:18:00 7 counsel for the parties, the Court staff, everyone on this
12:18:02 8 side of the courtroom recognizes and appreciates that. And
12:18:06 9 we -- we want you to know that we're thankful for your
12:18:10 10 service, even though you weren't selected to serve on this
12:18:14 11 jury.

12:18:15 12 Again, if you have any questions or need anything
12:18:17 13 with regard to being here this morning, I'll direct you to
12:18:20 14 the clerk's office and Ms. Clendening. Other than that,
12:18:22 15 ladies and gentlemen, with the sincere thanks for you being
12:18:25 16 here, you are excused at this time.

12:18:28 17 COURT SECURITY OFFICER: All rise.

12:18:29 18 (Unselected venire panel members out.)

12:19:05 19 THE COURT: Please be seated.

12:19:05 20 All right. Members of the jury, I'm going to ask
12:19:10 21 that you stand at this time and be sworn. I'll ask our
12:19:14 22 courtroom deputy, Ms. Lockhart, to administer the oath to
12:19:18 23 you. Please stand.

12:19:19 24 (Jurors sworn.)

12:19:24 25 THE COURT: Please be seated.

12:19:35 1 Ladies and gentlemen, I'm going to excuse you for
12:19:41 2 lunch in just a few minutes, but there's some instructions
12:19:44 3 I need to give you at this time before I do that.

12:19:47 4 First of all, ladies and gentlemen, do not discuss
12:19:51 5 this case with anyone. That is a -- an essential and
12:19:57 6 foundational instruction, and it's so important, you're
12:20:00 7 going to hear me repeat that throughout the trial process.

12:20:05 8 As a matter of fact, probably every time you get
12:20:06 9 up out of those seats, you're going to hear me say before
12:20:09 10 you do, don't discuss the case with anyone.

12:20:12 11 And when I say don't discuss the case, I mean
12:20:14 12 don't communicate in any way in any form about this
12:20:20 13 process. It is absolutely essential that when all the
12:20:25 14 evidence has been presented and you retire to the jury room
12:20:28 15 to deliberate on your verdict, which will be your unanimous
12:20:32 16 answers to certain questions that I will send to you at
12:20:35 17 that time, it is essential that the only information you
12:20:39 18 have to draw upon in answering those questions in the
12:20:42 19 verdict form must have come from the evidence that's been
12:20:47 20 presented in this courtroom during this trial and nowhere
12:20:51 21 else.

12:20:52 22 You must rely on only the sworn testimony of the
12:20:55 23 witnesses who testified under oath and are subject to
12:21:00 24 cross-examination and the documents and other items that
12:21:02 25 the Court has admitted into evidence.

12:21:07 1 That must be the sole universe of what you draw
12:21:10 2 upon to answer the questions in the verdict form.
12:21:13 3 Therefore, you must not communicate or discuss in any way
12:21:17 4 this case with anyone. Otherwise, there will be things
12:21:20 5 before you that go beyond the evidence presented in open
12:21:25 6 court. That's why this is so essential.

12:21:28 7 And I promise you, ladies and gentlemen, when you
12:21:31 8 get home this evening, unless you live alone, the first
12:21:35 9 thing you're going to hear when you walk through the door
12:21:37 10 is, tell me what happened in federal court in Marshall
12:21:40 11 today.

12:21:41 12 You can't even start to answer that question.
12:21:45 13 Just simply and upfront say to whoever, the Judge was very
12:21:51 14 clear, I can't talk about anything until the case is over.
12:21:54 15 Then I'll be free to discuss it with you. But you must not
12:21:57 16 communicate with anyone in any way about this case.

12:22:00 17 And as a part of that, any of you that are active
12:22:02 18 on any form of social media, whether it's Facebook or
12:22:07 19 Twitter or Instagram or any of the other variations that
12:22:10 20 are out there, you must not post or tweet or do anything
12:22:15 21 with regard to social media. That is communication. You
12:22:18 22 must not communicate with anyone about this case.

12:22:22 23 And that, ladies and gentlemen, goes to the eight
12:22:24 24 of you among yourselves. You are not permitted to talk
12:22:27 25 among yourselves about the evidence or the case until the

12:22:33 1 time that all the evidence has been heard and at the point
12:22:38 2 that I instruct you to retire to the jury room and to
12:22:41 3 deliberate on your verdict. At that point, but only at
12:22:45 4 that point, things shift and -- between the eight of you,
12:22:51 5 you go from not being able to discuss the case among
12:22:54 6 yourselves to being required to discuss the case and the
12:22:57 7 evidence among yourselves.

12:23:00 8 But until we get to that point, when I -- until I
12:23:02 9 instruct you to retire to the jury room and to deliberate
12:23:05 10 on your verdict, you must not communicate, even among the
12:23:09 11 eight of yourselves, about anything involving the trial or
12:23:12 12 the evidence in this case.

12:23:16 13 So at this point, my instruction to you is
12:23:19 14 completely across the board, do not communicate with anyone
12:23:22 15 in any way about this case, including the eight of
12:23:26 16 yourselves.

12:23:26 17 Also, you should not attempt to do any -- do any
12:23:31 18 research about anything involved in this case. You should
12:23:34 19 not go online and try to look up the lawyers or the parties
12:23:38 20 or the law firms or any of the products that you might hear
12:23:44 21 about. You're not permitted to do any research of any kind
12:23:48 22 in any way, whether it's online or otherwise.

12:23:50 23 And with that in mind, I'm going to ask that if
12:23:55 24 you have a cell phone device with you, that you not bring
12:24:00 25 it back into the courtroom. And if you have it with you

12:24:03 1 today, leave it on the table in the jury room. And when
12:24:07 2 you come back tomorrow, don't bring it at all. Either
12:24:10 3 leave it in your car or leave it at home. But I do not
12:24:13 4 want you to be tempted with a smartphone that is a computer
12:24:18 5 you hold in your hand where you might be tempted to do any
12:24:22 6 research or let's Google this or let's look at that. I
12:24:25 7 don't want you to have that temptation.

12:24:27 8 So if you have a smartphone, you're welcome to
12:24:31 9 leave it in the jury room for the remainder of today.
12:24:36 10 After today, don't bring it back inside the courthouse.
12:24:39 11 You can either leave it in your car, or if you have an
12:24:42 12 important email that you're expecting related to a business
12:24:46 13 matter, you'll have an opportunity during the day at breaks
12:24:47 14 to go to your car and look at it if it's important, but
12:24:49 15 don't bring those handheld computers, those smartphones
12:24:53 16 back into the courtroom at all after today.

12:24:55 17 Now, you're going to see the lawyers with those
12:24:57 18 kind of devices at their tables during the trial. Those
12:25:00 19 are tools that they are using to conduct this case.
12:25:03 20 They're permitted to do that. They're not permitted to
12:25:06 21 allow them to interrupt or disrupt the trial, and they will
12:25:09 22 have them on silent. If that's not the case, then I'll
12:25:13 23 deal with it. But don't feel that you've been put upon
12:25:17 24 that they can have a cell phone in their hand and you
12:25:20 25 can't. There are very different reasons why I want you to

12:25:23 1 leave them at home starting tomorrow, and they'll have them
12:25:25 2 available to them in the courtroom.

12:25:26 3 Also, ladies and gentlemen, I don't think it's
12:25:30 4 going to happen in this case, but it's possible, and I want
12:25:34 5 to bring it to your attention. It's within the realm of
12:25:38 6 possibility that some third party over the course of this
12:25:41 7 trial could attempt to contact you and to influence your
12:25:45 8 vote and your decision in this case. I don't think that's
12:25:49 9 likely, but I want you to understand there are no
12:25:52 10 insignificant cases that get to trial in a United States
12:25:56 11 District Court.

12:25:57 12 This is an important case to both of these
12:25:59 13 parties. There's a lot on the line for both of these
12:26:01 14 parties. And it is at least within the realm of
12:26:05 15 possibility that some outside third party might try to
12:26:10 16 influence your decision in this case.

12:26:12 17 If you get any overture of any type from anyone
12:26:17 18 that you are not comfortable with in any way while you're
12:26:20 19 serving as a juror in this case, you should immediately
12:26:24 20 inform Ms. Clendening. She will advise me, and the Court
12:26:27 21 will deal with it. I don't think it's likely, but it's
12:26:27 22 within the realm of possibility, so I need to call it to
12:26:27 23 your attention.

12:26:40 24 One other thing, ladies and gentlemen, during the
12:26:40 25 course of the trial, you'll be coming in the mornings and

12:26:42 1 leaving in the afternoons, there will be breaks and
12:26:44 2 recesses, it's entirely possible, in fact it's probable,
12:26:48 3 that at some point you're going to pass in close proximity,
12:26:50 4 one of these lawyers, one of the witnesses, one of the
12:26:53 5 corporate representatives connected with this case, either
12:26:55 6 in the hallway, on the front steps, somewhere in and around
12:27:01 7 this courthouse.

12:27:01 8 When that happens, they're not going to speak to
12:27:06 9 you. They're not going to smile and say good morning.
12:27:08 10 They're not going to be friendly and gregarious, as we
12:27:12 11 often are in East Texas. That's because I've instructed
12:27:15 12 them not to, and that's because you are not to have any
12:27:18 13 communications of any type with anyone that would influence
12:27:21 14 you in any way and that would bring anything to bear other
12:27:27 15 than the sworn testimony that you receive in open court
12:27:30 16 during the trial and the exhibits that I admit into
12:27:33 17 evidence.

12:27:33 18 It all goes back -- most of the instructions
12:27:36 19 you're going to hear from me go back to that same bedrock
12:27:40 20 principle that the sole source of the only information that
12:27:43 21 you should have to draw upon in answering the questions
12:27:46 22 that will be in the verdict at the end of this trial must
12:27:50 23 be limited to what is given in open court under oath by way
12:27:55 24 of testimony that's subject to cross-examination and the
12:27:58 25 exhibits that the Court admits into evidence by ruling of

12:28:02 1 the Court under the Federal Rules of Evidence. That's it,
12:28:04 2 ladies and gentlemen.

12:28:05 3 And we must be diligent, all of us, to make sure
12:28:09 4 that there's nothing from any other source that comes into
12:28:11 5 your minds or your presence as a part of this trial.

12:28:15 6 That's why you're going to hear that instruction
12:28:17 7 from me over and over, and that's why if you smile at
12:28:21 8 somebody first thing in the morning and they're related to
12:28:23 9 one of these parties, they're not going to smile back,
12:28:25 10 they're not going to speak, they're not going to ask you,
12:28:28 11 did you have a good night? They're not going to say
12:28:31 12 anything.

12:28:32 13 Don't hold that against them when that happens.
12:28:35 14 Don't think they're being rude or unfriendly. They're
12:28:37 15 simply following the Court's instruction all related back
12:28:42 16 to that fundamental principle that I've mentioned to you.

12:28:44 17 Also, so you'll know, over the course of the
12:28:48 18 trial, it's been my experience that jurors in our part of
12:28:51 19 the country would rather work longer days each day and be
12:28:55 20 away from their homes and their families and their
12:28:57 21 businesses a shorter number of days. There are places in
12:29:03 22 the United States where in federal court they start at
12:29:05 23 10:00 o'clock in the morning, and they stop at 3:30 or 4:00
12:29:08 24 o'clock in the afternoon. But instead of five days to try
12:29:12 25 this case, it will take 10 or 15 days to try this case.

12:29:16 1 We're not going to do that. We're going to start
12:29:18 2 at 8:30 every morning, and we will go at least until 5:30
12:29:22 3 or 6:00 o'clock each evening. If we've got a witness on
12:29:27 4 the witness stand that has 15 or 20 more minutes before
12:29:30 5 they're finished and it's 6:00 o'clock, we may go until
12:29:30 6 6:20 or 6:15.

12:29:33 7 I want you to be aware that my practice and the
12:29:36 8 one I think is most acceptable to the largest number of
12:29:41 9 people in our part of the country is we'd much rather be
12:29:44 10 gone from home and work a shorter number of days but work
12:29:48 11 each day a longer number of hours. So that's the approach
12:29:51 12 that I typically take, and that's the approach we'll take
12:29:53 13 in this case.

12:29:54 14 So beginning tomorrow morning, I will need you in
12:29:57 15 the jury room present and assembled and ready to go by 8:30
12:30:00 16 which means you need to get here a little bit before 8:30
12:30:04 17 each morning.

12:30:05 18 And we will typically take a recess somewhere
12:30:09 19 between an hour and a half and two hours each part of the
12:30:14 20 day, and then we'll have a recess for lunch each day.

12:30:20 21 You also need to know that I ordered the
12:30:22 22 government -- the clerk's office to provide your lunch to
12:30:24 23 you each day in the jury room. So lunch is going to be
12:30:27 24 brought to you in the jury room each day. You're not going
12:30:30 25 to need to leave and go find a place to eat. Especially

12:30:30 1 those of you that are not familiar with Marshall, that will
12:30:33 2 save us a lot of time and allow us to move the process
12:30:36 3 through quicker so that we can finish within the time
12:30:38 4 estimate that I gave you during jury selection, and
12:30:41 5 hopefully have a verdict in hand and the case finished
12:30:45 6 sometime on Friday of this week.

12:30:46 7 All right. Ladies and gentlemen, at this time,
12:30:54 8 I'm going to excuse you for lunch. It should be in the
12:30:57 9 jury room waiting for you.

12:31:00 10 Again, do not discuss or communicate about this
12:31:03 11 case in any way with anyone, and we'll have you back after
12:31:07 12 lunch, at which time I will give you my preliminary
12:31:11 13 instructions, we'll hear opening statements from the
12:31:13 14 lawyers, and then after the opening statements, we'll get
12:31:16 15 on to the evidence.

12:31:18 16 After the opening statements, the Plaintiff will
12:31:20 17 call their witnesses, put on their evidence, which is
12:31:23 18 called the Plaintiff's case-in-chief. Then when they have
12:31:26 19 finished with that, they will rest their case-in-chief, and
12:31:30 20 the Defendants will put on their evidence and call their
12:31:33 21 witnesses and present the Defendant's case-in-chief.

12:31:37 22 Then when the Defendants have called all their
12:31:40 23 witnesses and presented all their evidence, the Defendant
12:31:42 24 will rest their case-in-chief.

12:31:44 25 When the Defendant rests its case-in-chief, then

12:31:47 1 the Plaintiff will have an opportunity to call what are
12:31:50 2 called rebuttal witnesses. I don't know whether the
12:31:52 3 Plaintiff will or not, but at that point, if they have
12:31:57 4 rebuttal witnesses, they will put them on. And when the
12:32:00 5 Plaintiff's rebuttal witnesses have all testified, then you
12:32:02 6 will have heard all the evidence in the case.

12:32:04 7 And at that point, I will give you my final
12:32:09 8 instructions on the law that you are to apply. This is
12:32:11 9 sometimes called the Court's charge to the jury.

12:32:15 10 After I've given you those final instructions,
12:32:17 11 then counsel for both Plaintiff and Defendant will present
12:32:20 12 their closing arguments to you. And when you've heard
12:32:24 13 your -- heard the closing arguments, when that's complete
12:32:27 14 and after I have completed any final instructions, then I
12:32:30 15 will instruct you to retire to the jury room and
12:32:34 16 considering all the evidence, deliberate on the verdict
12:32:36 17 that you're going to return in this case.

12:32:38 18 At that point, but not until, it will become your
12:32:43 19 obligation and duty to discuss among the eight of you the
12:32:46 20 evidence that you've heard in your attempt to arrive at a
12:32:50 21 unanimous verdict in this case.

12:32:51 22 So that's how the structure of the trial will go.
12:32:55 23 Preliminary instructions, opening statements, Plaintiff's
12:32:59 24 case-in-chief, Defendant's case-in-chief, Plaintiff's
12:33:02 25 rebuttal case, final instructions from the Court, closing

12:33:06 1 arguments from the lawyers, then you will retire to
12:33:09 2 deliberate on the verdict. That's a thumbnail structural
12:33:13 3 sketch of how the trial will go over the next week.

12:33:16 4 All right. Ladies and gentlemen, with those
12:33:17 5 instructions, again reminding you not to discuss the case
12:33:20 6 in any way, you're excused to the jury room for lunch,
12:33:23 7 which should be waiting for you there.

12:33:25 8 COURT SECURITY OFFICER: All rise.

12:33:26 9 (Jury out.)

12:33:53 10 THE COURT: Be seated, please.

12:33:53 11 Counsel, this morning in chambers we met and
12:34:00 12 reviewed objections to certain demonstratives and other
12:34:04 13 issues that would arise during opening statements. At that
12:34:06 14 point, there seemed to be an agreement worked out among
12:34:09 15 Plaintiff and Defendant concerning the issue of Doctrine of
12:34:15 16 Equivalents. And I indicated to you in chambers that once
12:34:18 17 we had the jury selected but outside their presence, I
12:34:21 18 would ask you to put that agreement on the record.

12:34:23 19 Are you prepared to do that?

12:34:29 20 MS. GLASSER: Your Honor, we had presented a
12:34:31 21 proposal to the Defendants. If they're amenable to it, we
12:34:34 22 can read it into the record or print it out for Your Honor.

12:34:37 23 MR. BITTNER: Your Honor, we do have a slight
12:34:39 24 counterproposal. We just got it a few minutes ago. I can
12:34:42 25 speak with Ms. Glasser over the break. I believe that we

12:34:45 1 can reach an agreement.

12:34:46 2 THE COURT: All right. You all -- I -- I gather
12:34:50 3 you don't think this is an insurmountable difference,
12:34:54 4 Mr. Bittner?

12:34:55 5 MR. BITTNER: I do not.

12:34:56 6 THE COURT: I'll let you all discuss it over the
12:34:58 7 lunch break, and then before I bring the jury back in, I'll
12:35:02 8 expect to hear something to announce into the record at
12:35:05 9 that time.

12:35:05 10 MS. GLASSER: What would Your Honor's preference
12:35:06 11 be as to the reading of it? Is it something that the Court
12:35:07 12 will do or -- or the parties?

12:35:08 13 THE COURT: No, I'll probably ask you to read it
12:35:11 14 into the record, and then ask the other side to confirm
12:35:13 15 that that's accurate.

12:35:15 16 MS. GLASSER: Thank you, Your Honor.

12:35:16 17 THE COURT: All right. Are there -- is either
12:35:19 18 side aware of anything else we need to take up before we
12:35:21 19 break for lunch?

12:35:23 20 MR. SHEASBY: Your Honor, there is one issue,
12:35:25 21 which is Defendants have asked for a short instruction to
12:35:28 22 be given. There are -- there is video plays this afternoon
12:35:31 23 that have been agreed to. The Defendants have asked for a
12:35:33 24 short instruction to be given, given context of video
12:35:36 25 plays. We're in the process of agreeing to that. And my

12:35:39 1 expectation is that when we come back after lunch, we'll
12:35:43 2 present that proposed instruction to the jury on video
12:35:45 3 plays.

12:35:46 4 THE COURT: All right. Well, again, I'll direct
12:35:47 5 that you meet and confer about that over the lunch hour,
12:35:50 6 and we'll see where we are after lunch is completed but
12:35:53 7 before I bring the jury back in.

12:35:55 8 MR. SHEASBY: Thank you, Your Honor.

12:35:56 9 THE COURT: Anything from Defendant at this
12:35:57 10 juncture?

12:35:57 11 MR. MELSHEIMER: No, Your Honor.

12:35:58 12 THE COURT: We stand in recess for lunch.

12:36:00 13 I'll plan to be back on the bench by 1:30.

12:36:06 14 COURT SECURITY OFFICER: All rise.

12:36:06 15 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

1/6/2020
Date